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THE CHARTER

OF THE

CITY OF OAKLAND

*ADOPTED BY THE PEOPLE OF THE
CITY OF OAKLAND ON NOVEMBER 5, 1968
RATIFIED BY THE SECRETARY OF STATE
OF THE STATE OF CALIFORNIA AND
IN EFFECT JANUARY 28, 1969
AS AMENDED THROUGH AND INCLUDING
NOVEMBER 6, 1990*



CITY OF OAKLAND

CITY COUNCIL

MAYOR

Elihu Mason Harris

VICE MAYOR

Leo Bazile

MEMBERS

Aleta Cannon	Marge Gibson Haskell
Frank H. Ogawa	Nate Miley
Wilson Riles, Jr.	Dick Spees
Mary Moore	

CITY MANAGER

Henry L. Gardner

CITY ATTORNEY

Jayne Williams

CITY AUDITOR

Norma Ng Lau

CITY CLERK AND CLERK OF THE COUNCIL

Arrece Jameson

PREPARED BY THE CITY CLERK DEPARTMENT

505 - 14th Street, Room 609

Oakland, CA 94612

(415) 273-3611



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**THE CHARTER
OF THE
CITY OF OAKLAND**

In Effect January 28, 1969

We, the people of the City of Oakland, the State of California, do ordain and establish this Charter as the fundamental law of the City, under the Constitution of the State of California.

**ARTICLE I
POWERS AND FORM OF GOVERNMENT**

Section 100. **Name.** The municipal corporation now existing and known as the City of Oakland shall remain and continue a body politic and corporate in name and fact by the name of the City of Oakland, and by such name shall have perpetual succession.

Section 101. **Boundaries.** The boundaries of the City of Oakland, as they exist on the effective date of this Charter, shall continue until changed in the manner authorized by law.

Section 102. **Rights in Succession.** The City of Oakland, hereinafter termed the City, shall have, exercise, and enjoy all the rights, immunities, powers, benefits, privileges and franchises now possessed, enjoyed, owned or held by it.

Section 103. **Continuance of Laws.** All lawful ordinances, resolutions, rules and regulations or portions thereof now in force and not in conflict or inconsistent herewith are continued in force until they have been duly repealed or amended.

Section 104. **Continuance of Officers and Employees.** All officers and employees of the City now serving shall continue in their offices or employments until removed or replaced in the manner prescribed by the authority of this Charter.

Section 105. **Transfer of Records and Property.** The transfer of any function from one department to another by this Charter or by any lawful ordinance or administrative authority also authorizes the corresponding transfer of all records, property, and equipment necessary to such function.

Section 106. **General Powers.** The City shall have the right and power to make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in this Charter; provided, that nothing herein shall be construed to prevent or restrict the City from exercising or consenting to, and the City is hereby authorized to exercise, any and all the rights, powers and privileges heretofore or hereafter granted or prescribed by the general laws of the State including those specifically applicable to general law cities; provided, also, that where the general laws of the State provide a procedure for the carrying out and the enforcement of any rights or powers belonging to the City, said procedure shall control and be followed unless a different procedure shall have been provided in the Charter or by ordinance.

It is the intention of the people in adopting this section to take advantage of the provisions of Section 6 of Article XI of the Constitution of the State of California giving cities Home Rule as to municipal affairs.

Section 107. **Form of Government.** The government provided by this Charter shall be known as the Council-Manager form of government.

ARTICLE II THE COUNCIL

Section 200. **Composition of the Council.** The Council shall consist of eight Councilmen, nominated and elected as hereinafter provided, and the Mayor.

Section 201. **Qualifications.** No person shall be eligible for or continue to hold the office of Councilmember, either by election or appointment, unless he is a citizen of the United States, a qualified elector, a resident for at least thirty days of the City or of a territory lawfully annexed or consolidated, and a resident of the district from which he may be a candidate for at least thirty days immediately next preceding his nomination or appointment. (Amended by: Stats. November 1988.)

Section 202. **Compensation.** The members of the Council, other than the Mayor, shall each receive the compensation heretofore provided by Charter, until changed by Charter amendment or by ordinance; provided that any such compensation fixed by ordinance shall not exceed the amount which the city council of a general law city having no greater population than the City can prescribe under the provisions of state law as compensation for its councilmen.

Section 203. **Nomination and Election of Councilmembers.** Seven Councilmembers shall be nominated from districts and one shall be nominated at large. The Councilmember-at-large shall be nominated and elected by the qualified electors of the City at large. The District Councilmembers shall be nominated and elected by the qualified electors of their respective districts. The districts shall be as they exist upon the taking effect of this section, until revised by ordinance. In the year 1993, and every ten years thereafter, and whenever any substantial territory is annexed to or consolidated with the City, the Council shall form new districts not exceeding seven. Districts shall be composed of contiguous territory, as equal as possible in population, and as geographically compact as practicable. No change in the boundary of a district shall operate to exclude an incumbent from office before the expiration of the term for which he was elected or appointed. (Amended by: Stats. October 1980 and June 1990.)

Section 204. **Term Office, Council.** The Councilmembers shall be elected to a term of four years beginning at 11:00 a.m. on the Monday following January 1 following their election. The Councilmembers elected or appointed to office to serve terms beginning in 1985 shall serve in office until 11:00 a.m. on the Monday following January 1 in 1991. The Councilmembers elected or appointed to office to serve terms beginning in 1987 shall serve in office until 11:00 a.m. on the Monday following January 1, 1993. In 1990 Municipal Elections will be held to select City officers for four year terms for the following offices: Councilmember, District #2; Councilmember, District #4, and, Councilmember, District #6. In 1992 Municipal Elections will be held to select City Councilmembers for four year

terms for the following offices: Councilmember, District #1; Councilmember, District #3; Councilmember, District #5; Councilmember, District #7; and Councilmember-At-Large. (Amended by: Stats. November 1988.)

Section 205. **Vacancies, Filling Of.** Any vacancy occurring in the office of Councilmember shall be filled by appointment by the majority vote of the remaining members of the Council; provided, that if two or less members remain, the appointment of members of the Council shall be made by the majority vote of a body consisting of the remaining members and the members of the Alameda County Board of Supervisors representing districts including a part of the City. In the event such body is unable to or fails within a period of five days to take such action, appointment shall be made by the Governor of California. An appointee to the office of Councilmember for the balance of an unexpired term shall hold office until the next general municipal election. (Amended by: Stats. November 1988.)

Section 206. **Vacancy, What Constitutes.** An office of Councilmember shall be declared vacant by the Council when the person elected or appointed thereto fails to qualify within ten days after his term is to begin, dies, resigns, ceases to be a resident of the City or of the district from which he was nominated, absents himself continuously from the City for a period of more than thirty days without permission from the Council, absents himself from any ten consecutive regular meetings except on account of his illness or when absent from City by permission of the Council, is convicted of a felony, is judicially determined to be an incompetent, is permanently so disabled as to be unable to perform the duties of his office, forfeits his office under any provision of this Charter, or is removed from office by judicial procedure. A finding of disability shall require the affirmative vote of at least six members of the Council after considering competent medical evidence bearing on the physical or mental capability of the Councilmember. (Amended by: Stats. November 1988.)

Section 207. **Powers of the Council.** The Council shall be the governing body of the City. It shall exercise the corporate powers of the City and, subject to the expressed limitations of this Charter, it shall be vested with all powers of legislation in municipal affairs adequate to provide a complete system of local government consistent with the Constitution of the State of California. It shall have no administrative powers except as specifically reserved in the Mayor as provided in Section 305 of this Charter. The Council shall fix the compensation of all City employees, officers and officials except as otherwise provided by this Charter. (Amended by: Stats. November 1988.)

Section 208. **Meetings of the Council.** At 11:00 a.m. on the first Monday following January 1 following each General Municipal Election, the Council shall meet at the established Council meeting place, at which time and place the newly elected members of the Council shall assume the duties of their office; and at such meeting, and at the first meeting in January in even-numbered years, the Council shall elect a Vice-Mayor from among its members to serve for a one-year term. Thereafter, the Council shall meet regularly at the time and place fixed by resolution. Special meetings may be held at the regular place of meeting and shall be called, and notice thereof given, by the City Clerk upon the written request of the Mayor, the City Manager or three members of the Council and

such notice shall state the special subject to be considered at the special meeting; and no other subject shall be there considered. Regular or special meetings may be held at places other than the regular meeting place only in an emergency in which the regular meeting place is untenable, or for some purpose of public convenience, upon the posting of a public notice at the regular meeting place that the Council is meeting elsewhere to be designated on the notice. (Amended by: Stats. June 1988.)

Section 209. **Quorum.** Five members of the Council shall constitute a quorum for the transaction of business, but a lesser number may adjourn.

Section 210. **Council Action.** The Council shall provide by resolution for the order of business and the rules of procedure for the conduct of Council meetings. The Council shall act by ordinance or resolution or motion. The "ayes" and "noes" shall be taken on the passage of all ordinances and resolutions and entered upon the journal of the Council's proceedings. Each proposed ordinance or resolution shall be introduced in written or printed form. The affirmative vote of five members of the Council shall be required to adopt any ordinance or resolution, except as otherwise provided by this Charter or by general law.

Section 211. **Enactment of Ordinances.** In addition to such other action of the Council as is required by statute or by this Charter to be by ordinance, every act of the Council establishing a penalty or granting a franchise shall be by ordinance. The enacting clause of all ordinances shall be: "**The Council of the City of Oakland does ordain as follows:**"

Section 212. **Adoption and Amendment of Ordinances.** Except for emergency ordinances, no ordinance shall be adopted by the Council on the day of its introduction, nor within five days thereafter, nor except at a regular or adjourned regular or special meeting. If an ordinance is altered after its introduction (except for the correction of typographical or clerical errors), it shall not be adopted except at a regular or adjourned regular or special meeting held not less than five days after the date of such alteration. Any section or subsection of an ordinance may be amended solely by the reenactment of such section or subsection at length as amended.

Section 213. **Emergency Ordinances.** Any ordinance declared by the Council to be necessary for preserving the public peace, health, or safety in an emergency, and containing a statement of the reasons constituting such necessity, may be introduced and adopted at the same meeting if passed by the affirmative vote of at least six members. Appropriations to meet an urgent need for public expenditure to protect the public health, safety, or welfare may be made as an emergency ordinance.

Section 214. **Publication.** Before final adoption of an ordinance, its title, a digest thereof, a notice showing the vote on its introduction and the date, time, and place of hearing on its final adoption, and notice that three full copies thereof are available for use and examination by the public in the Office of the City Clerk, shall be published once in the official newspaper of the City at least three days before said hearing date. Notice of the adoption of an emergency ordinance, the vote thereon, its title, and a digest thereof shall be similarly published once within three days after its adoption. The notices and digests shall be prepared by the City Attorney.

Section 215. **Codification.** The duly adopted and effective ordinances of the City may be compiled and arranged as comprehensive codes, which may be adopted by reference by the passage of an ordinance for such purpose.

Section 216. **Effective Date of Ordinance.** An ordinance receiving upon final adoption the affirmative vote of at least six members of the Council shall be effective immediately, unless a later date is specified therein. All other ordinances, unless a different date is required by this Charter, shall be effective upon the seventh day after final adoption; provided, that within three days after said date of final adoption, the Mayor may file in the Office of the City Clerk written notice to the Council that he has suspended the taking effect of the ordinance, stating in said notice the reason or reasons for his action, which notice the City Clerk shall forthwith deliver to the members of the Council. Such notification shall automatically cause the reconsideration of the ordinance by the Council at its regular meeting next following the sixth day after the aforesaid final adoption of the ordinance. If, upon reconsideration, the ordinance is again approved by the affirmative vote of at least five members of the Council, it shall take effect immediately; and if not so approved, it shall be ineffective.

Section 217. **Penalty for Violation of Ordinances.** The Council may make the violation of its ordinances a misdemeanor, which may be prosecuted in the name of the People of the State of California or may be redressed by civil action, and may prescribe punishment for such violations by a fine not to exceed \$1,000 or by imprisonment not to exceed one year, or by both such fine and imprisonment.

Section 218. **Non-Interference in Administrative Affairs.** Except for the purpose of inquiry, the Council and its members shall deal with the administrative service for which the City Manager, Mayor and other appointed or elected officers are responsible, solely through the City Manager, Mayor or such other officers. Except for powers particularly reserved to the Mayor pursuant to Section 305 of this Charter, neither the Council nor any member shall give orders to any subordinate of the City under the jurisdiction of the City Manager or such other officers, either publicly or privately; nor shall they attempt to coerce or influence the City Manager or such other officers, in respect to any contract, purchase of any supplies or any other administrative action; nor in any manner direct or request the appointment of any person to or his removal from office by the City Manager, or any of his subordinates or such other officers, nor in any manner take part in the appointment or removal of officers or employees in the administrative service of the City. Violation of the provisions of this section by a member of the Council shall be a misdemeanor, conviction of which shall immediately forfeit the office of the convicted member. (Amended by: Stats. November 1988.)

Section 219. **Ordinance: When Required.** In addition to other actions required by law or by specific provision of this Charter to be done by ordinance, those actions of the Council shall be by ordinance which:

- (1) Adopt or amend an administrative code or establish, alter or abolish any City department, office or agency as authorized in Article VI of this Charter.
- (2) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed.

- (3) Levy taxes except as otherwise provided in this Charter with respect to the property tax levied by adoption of the budget.
- (4) Regulate the rates charged for its services by a public utility.
- (5) Authorize the borrowing of money except as otherwise provided in Section 812 of this Charter.
- (6) Convey or lease, or authorize the conveyance or lease for longer than one year, of any real property of the City, or any interest therein, or the acquisition of real property, the purchase price of which is more than Five Thousand Dollars (\$5,000.00).
- (7) Amend or repeal any ordinance previously adopted.

Provided, acts other than those referred to hereinabove under this section, or other than may be specifically otherwise provided for in other sections of this Charter, may be done either by ordinance or by resolution.

ARTICLE III THE MAYOR

Section 300. **The Mayor.** The Mayor shall be nominated and elected from the City at large and shall receive an annual salary payable in equal monthly installments, and without any additional compensation or fees provided for in Section 202 of this Charter. The salary shall be set by the Council, which shall be not less than 70% nor more than 90% of the average salaries of City Managers'/Chief Executive Officers of California cities within the three immediate higher and the three immediate lower cities in population to Oakland, but shall not exceed the salary of the City Manager of the City of Oakland as certified by the City Clerk. The Mayor's salary shall be reviewed by the City Council in odd-numbered years and may be adjusted by the Council as provided for herein. (Amended by: Stats. November 1988.)

Section 301. **Qualifications.** No person shall be eligible for or continue to hold the Office of Mayor, either by election or appointment, unless he is a citizen of the United States, a qualified elector and resident for at least thirty days of the City or a territory lawfully annexed or consolidated. (Amended by: Stats. November 1988.)

Section 302. **Term of Office, the Mayor.** The Mayor shall be elected to a term of four years beginning at 11:00 a.m. on the first Monday of January following his election. The Mayor elected to Office to serve a term beginning in 1985 shall serve in Office until 11:00 a.m. on the Monday following January 1 in 1991. In 1990 municipal elections will be held to select City Officers for four year terms, including the Office of Mayor. (Amended by: Stats. November 1988.)

Section 303. **Vacancy, Filling Of.** Upon the declaration of vacancy in the office of the Mayor, the office of the Mayor shall be filled by the Vice-Mayor of the Council. When the Vice-Mayor of the Council assumes the office of Mayor upon declaration of a vacancy, he shall serve until the vacancy is filled by the Council as provided herein. Any vacancy occurring in the office of Mayor shall be filled by appointment by the majority vote of the remaining members of the Council; provided, that if two or less members remain, the appointment of Mayor shall be made by the majority vote of a body consisting of the remaining members

and the members of the Alameda County Board of Supervisors representing districts including a part of the City. In the event such body is unable to or fails within a period of five days to take such action, appointment shall be made by the Governor of California. An appointee to the office of Mayor for the balance of an unexpired term shall hold office until the next general municipal election. (Amended by: Stats. November 1988.)

Section 304. **Vacancy: What Constitutes.** The office of Mayor shall be declared vacant by the Council when the person elected or appointed thereto fails to qualify within ten days after his term is to begin, dies, resigns, ceases to be a resident of the City or absents himself continuously from the City for a period of more than thirty days without permission from the Council, absents himself from any ten consecutive regular meetings except on account of own illness or when absent from the City by permission of the Council, is convicted of a felony, is judicially determined to be an incompetent, is permanently so disabled as to be unable to perform the duties of his office, forfeits his office under any provision of this Charter, or is removed from office by judicial procedure. A finding of disability shall require the affirmative vote of at least six members of the Council after considering competent medical evidence bearing on the physical or mental capability of the Mayor. (Amended by: Stats. November 1988.)

Section 305. **Functions, Powers and Duties.** The Mayor shall be the chief elective officer of the City, responsible for providing leadership and taking issues to the people and marshalling public interest in and support for municipal activity. The Mayor shall have the following powers, duties, and responsibilities:

- (a) The Mayor shall be responsible for the submission of an annual budget to the Council which shall be prepared by the City Manager under the direction of the Mayor and Council. The Mayor shall, at the time of the submission of the budget, submit a general statement of the conditions of the affairs of the City, the goals of the administration, and recommendations of such measures as he may deem expedient and proper to accomplish such goals.
- (b) Recommend to the Council such measures and legislation as he deems necessary and to make such other recommendations to the Council concerning the affairs of the City as he finds desirable.
- (c) Encourage programs for the physical, economic, social and cultural development of the City.
- (d) Actively promote economic development to broaden and strengthen the commercial and employment base of the City.
- (e) Preside over meetings of the Council.
- (f) Serve as ceremonial head of the City.
- (g) Represent the City in inter-governmental relations as directed by the Council.
- (h) Provide community leadership.

The Mayor shall devote his full time and attention to the duties of the Office of the Mayor and shall not engage in outside employment while in office. However, nothing shall prevent the Mayor from the receipt of income earned from business(s) or investment(s) in which he is not actively engaged and which are not in conflict with the performance of his duties and responsibilities. (Amended by: Stats. November 1988.)

Section 306. **Duties of Vice-Mayor.** In the absence or temporary disability of the Mayor, the Vice-Mayor shall perform the duties of the office. (Amended by: Stats. November 1988.)

ARTICLE IV CITY OFFICERS

Section 400. **Designation as Officer.** In addition to the Councilmen and the Mayor, the officers of the City shall be the City Manager, the City Attorney, the City Clerk, the City Auditor, and such department heads, members of boards or commissions and executive officers of such boards and commissions as may be so designated by ordinance. The City Manager and the City Attorney may be hired by contract, for a term not to exceed seven years, notwithstanding the appointive and removal authority otherwise provided herein for the Council. (Amended by: Stats. November 1988.)

Section 401. **City Attorney.** The City Attorney shall be appointed by the Council, which may at its pleasure remove him from office or reduce his salary in the same manner and subject to the same conditions as are prescribed for such actions affecting the City Manager. The City Attorney shall advise all officers, boards, commissions, and other agencies of the City on legal matters referred to him and shall render written legal opinions when the same are requested in writing by a member of the Council or the City Manager or any other officer, board or commission of the City. He shall draft such ordinances, resolutions, contracts and other legal documents as directed by the Council or requested by the City Manager or any official board or commission of the City. He shall act as counsel in behalf of the City or any of its officers, boards, commissions, or other agencies in litigation involving any of them in their official capacity. He shall pass on the form and legality of all contracts of the City before the same are executed. He shall not settle or dismiss any litigation brought for the City nor settle any litigation brought against the City which may be under his control unless upon his written recommendation he is authorized to do so by the Council. He shall administer the office of City Attorney, and shall have the power to appoint, discipline and remove all officers and employees of his office subject to the provisions of Article IX of this Charter. The Council may empower the City Attorney, at his request and without regard to the provisions of Article IX, to employ special legal counsel, and he shall have the power to employ appraisers, engineers and other technical and expert services necessary for the handling of any pending or proposed litigation, proceeding or other legal matter. Upon the City Attorney's recommendation and the approval of the Council, when he has a

conflict of interest in litigation involving another office of the City in his official capacity, such other officer may retain special legal counsel at City expense. (Amended by: Stats. November 1988.)

Section 402. City Clerk. The City Clerk shall be appointed or discharged by the City Manager subject to confirmation by the Council. He shall be the Clerk of the Council and keep an accurate public record of all ordinances, resolutions and motions, shall have custody of the official seal and all official records committed to his care, make affidavits and administer oaths without charge in matters affecting the business of the City, conduct elections, and perform the other duties of a City Clerk under general law where not inconsistent with this Charter or the ordinances of the City. (Amended by: Stats. November 1988.)

Section 403. City Auditor. The City Auditor shall be nominated and elected in the same manner, for the same term, and at the same election, as the Mayor. To be eligible to the office a person must be a qualified elector of the State of California, and shall be a resident of the City at the time of filing nomination papers and for the thirty (30) days immediately preceding the date of filing, and shall be certified by the California State Board of Accountancy as a Certified Public Accountant or by the Institute of Internal Auditors as a Certified Internal Auditor. The salary of the office shall be set by the Council and may not be reduced during the City Auditor's term of office, except as a part of a general reduction of salaries for all officers and employees in the same amount or proportion. The City Auditor shall have the power and it shall be his duty to audit the books, accounts, money and securities of all departments and agencies of the City and such other matters as the Council may request; to report to the Council periodically the results of such audits and to advise and make recommendations to the City Manager regarding accounting forms design, fiscal and statistical reports and the methods or procedures for maintaining the accounts and accounting system throughout all departments, offices and agencies of the City. The City Auditor shall report to the Council instances of noncompliance with accepted accounting principles where recommendations for compliance have not been implemented by the City Manager after reasonable time and opportunity. He shall be represented in all legal matters by the City Attorney except as provided otherwise in Section 401. (Amended by: Stats. November 1979.)

Section 404. Board of Education.

(a) The Board of Education shall consist of seven District School Directors nominated and elected by the qualified electors of their respective districts for a term of four years. The District School Directors shall be elected at the times and in the manner in this Charter provided for members of the Council and shall be required to have the same qualifications. The School Directors' Districts shall have the same boundaries as the seven Council Districts.

The provisions of the Education Code of the State of California shall apply as to matters not provided for in this Charter.

(b) Notwithstanding any other provisions of this section, the respective terms of office of the Board of Education shall be as follows:

- (1) Directors elected or appointed to serve terms beginning in 1985 shall serve in office until 11:00 a.m. on the Monday following January 1, in 1991.
- (2) Directors elected or appointed to serve terms beginning in 1987 shall serve in office until 11:00 a.m. on the Monday following January 1, in 1993.
- (3) At the 1990 General Municipal Election, District School Director seats in Districts 2, 4, and 6 shall be filled for 4-year terms.
- (4) At the 1992 General Municipal Election, District School Director seats in Districts 1, 3, 5, and 7 shall be filled for 4-year terms thereafter. (Amended by: Stats. June 1988 and November 1988.)

(c) No District School Director of the Board of Education may interfere with the performance by the Superintendent of the District of those duties vested in or delegated to the Superintendent of the District by statute or by act of the Board of Education. Such interference specifically includes any attempt by a District School Director to order, coerce or influence, publicly or privately, any subordinate, official or employee of the District as to any matter within the authority of the Superintendent under statute or as conferred by the Board of Education through its policies, procedures, resolutions, or minutes of meetings. Such interference will constitute official misconduct. (Added by: Stats. June 1990.)

(d) Violations of California Education Code section 7053 and 35230 and California Government Code section 1090 and 1126(a) will constitute official misconduct. (Added by: Stats. June 1990.)

(e) Any District School Director who engages in official misconduct as defined in subsections (c) and (d) above may be removed from office, pursuant to Government Code section 3060, by an accusation presented by the Alameda County Grand Jury or as otherwise provided by law. (Added by: Stats. June 1990.)

Section 405. Officers Prohibited Political Activity. The City Manager and the City Attorney shall not participate in municipal political activities or elections for municipal office, nor in any other political activities which are prohibited for city employees by state law. (Amended by: Stats. November 1988.)

ARTICLE V THE CITY MANAGER

Section 500. Appointment. The Council shall appoint a City Manager who shall be the chief executive officer of the City. He shall be a person of demonstrated administrative ability with experience in a responsible, important executive capacity and shall be chosen by the Council solely on the basis of his executive and administrative qualifications. No member of the Council shall, during the term for which he is elected or appointed, or for one year thereafter, be chosen as City Manager. (Amended by: Stats. November 1988.)

Section 501. Compensation and Tenure. The City Manager shall receive the salary fixed by the Council. He shall be appointed for an indefinite term and

shall be removable only upon the adoption of an ordinance by the affirmative vote of at least five members of the Council. He shall, upon demand, be given a written statement of the reasons for his proposed removal and the right to be heard publicly at a meeting of the Council prior to the final vote on the ordinance for his removal, but pending such hearing and action the Council may suspend him from office. The Council may not reduce the salary of the City Manager except upon the adoption of an ordinance and like opportunity to be heard. The action of the Council in suspending or removing the City Manager or reducing his salary shall be final. (Amended by: Stats. November 1988.)

Section 502. **Acting City Manager.** The City Manager shall designate two or more of his assistants or department heads, in the sequence in which they are to serve, as Acting City Manager to serve as City Manager in the temporary absence or disability of the City Manager. (Amended by: Stats. November 1988.)

Section 503. **Powers of Appointment and Removal.** The City Manager shall be responsible to the Council for the proper and efficient administration of all affairs of the City under his jurisdiction, and shall, subject to the provisions of Article IX of this Charter and except as otherwise provided in this Charter, have the power to appoint, assign, reassign, discipline and remove all directors or heads of departments and all employees under his jurisdiction. He may delegate to directors or other department heads responsible to him the authority to appoint, discipline and remove subordinate employees, subject to the provisions of Article IX of this Charter. (Amended by: Stats. November 1988.)

Section 504. **Duties.** The City Manager shall have the power and it shall be his duty:

- (a) To execute and enforce all laws and ordinances and policies of the Council and to administer the affairs of the City.
- (b) To attend all meetings of the Council, and its committees, unless excused, and such meetings of boards and commissions as he chooses or which he is directed to attend by the Council, and to participate in discussions at such meetings.
- (c) To recommend to the Council such measures and ordinances as he may deem necessary or expedient and to make such other recommendations to the Council concerning the affairs of the City as he finds desirable.
- (d) To investigate affairs of the City under his supervision, or any franchise or contract for the proper performance of any obligation running to the City within his jurisdiction.
- (e) To control and administer the financial affairs of the City. He may appoint a Director of Finance to act under his direction.
- (f) To prepare an annual budget under the direction of the Mayor and Council for the Mayor's submission to the Council.
- (g) To prepare or cause to be prepared the plans, specifications, and contracts for work which the Council may order.
- (h) To supervise the purchasing of materials and supplies and to make recommendations to the Council in connection with the awarding of public contracts and to see that all City contracts under his direction or that of the Council are faithfully performed.

- (i) To prepare and submit to the Council such reports as it may require.
- (j) To keep the Council at all times fully advised as to the financial condition and needs of the City.
- (k) To prescribe such general rules and regulations as he may deem necessary or expedient to the general conduct of the administrative departments under his jurisdiction.
- (l) When directed by the Council, to represent the City in its intergovernmental relations and to negotiate contracts for joint governmental actions, subject to Council approval.
- (m) To devote his entire time to the duties and interest of the City.
- (n) To perform such other duties as may be prescribed by this Charter or by ordinance or resolution. **(Amended by: Stats. November 1988.)**

ARTICLE VI ADMINISTRATIVE ORGANIZATION

Section 600. **Administrative Organization Authorized.** The Council shall by ordinance provide the form of organization through which the functions of the City under the jurisdiction of the City Manager are to be administered. Any combination of authorized duties, powers and functions which in the judgment of the Council will provide the most efficient and economical service possible, consistent with the public interest and in keeping with accepted principles of municipal administration, may be authorized by such ordinance. All departments or other administrative agencies so created shall be administered by the City Manager or by a department head or other officer appointed by and responsible to him. **(Amended by: Stats. November 1988.)**

Section 601. **Boards and Commissions.** The Council may create by ordinance such operational, advisory, appellate or rule-making boards and commissions as may be required for the proper operation of any function or agency of the City and prescribe their function, duties, powers, jurisdiction and the number of board and commission members, their terms, compensation and reimbursement for expenses, if any, subject to the provisions of this Article. Members of boards and commissions shall be appointed by the Mayor subject to confirmation by the affirmative vote of five members of the Council and may be removed for cause, after hearing, by the affirmative vote of at least six members of the Council. Vacancies shall be filled for any unexpired term in the same manner as the original appointments were made. **(Amended by: Stats. November 1988.)**

Section 602. **Continuation.** The departments, agencies, boards and commissions heretofore created by prior Charter, ordinance or administrative order, other than those provided for in Articles IV, V, VII, and IX of this Charter, may be modified or discontinued by ordinance adopted pursuant to this Article and are hereby continued until so modified or discontinued. **(Amended by: Stats. November 1988.)**

ARTICLE VII PORT OF OAKLAND

Section 700. **Establishment of a Port Department.** To promote and more definitely insure the comprehensive and adequate development of the Port of Oakland through continuity of control, management and operation, there is hereby established a department of the City of Oakland known as the "Port Department." (Amended by: Stats. November 1988.)

Section 701. **Board of Port Commissioners.** The exclusive control and management of the Port Department is hereby vested in the Board of Port Commissioners, which shall be composed of seven (7) members who shall be appointed by the Council, upon nomination by the Mayor.

No person shall be appointed as, or continue to hold office as, a member of the Board who is not at the time of his appointment, and has not been continuously for four (4) years immediately preceding his appointment, and who shall not continue to be during his term, a bona fide resident of the City of Oakland.

The members of the Board shall serve without salary or compensation. (Amended by: Stats. November 1988.)

Section 702. **Organization, Terms of Office.** The Board of Port Commissioners shall consist of seven (7) members nominated by the Mayor and appointed by the Council for a term of four (4) years. Members in office at the time this section takes effect shall continue in office until their successors are appointed and qualified. For terms commencing July 10, 1969, two (2) members shall be appointed to fill the positions expiring upon that date, and two (2) additional members shall be appointed to bring the membership of said Board to seven (7); provided, that the terms of such two additional members shall be for such original duration, in no event to exceed four years, as will insofar as practicable permit appointment at the end of subsequent terms of office of members, of either one or two members. (Amended by: Stats. November 1988.)

Section 703. **Removal.** Any member of the Board may be removed from office by the affirmative vote of six (6) members of the Council in the same manner and subject to the same conditions as the Council may remove the members of any of the Boards provided for in this Charter in Article VI. (Amended by: Stats. November 1988.)

Section 704. **Ordinances and Resolutions.** All action taken by the Board of Port Commissioners shall be by resolution, except as hereinafter set forth in this Article. Any member of the Board may require a record of the vote on any resolution to be made in its minutes. The Board shall keep a minute book wherein shall be recorded the proceedings taken at its meetings and it shall keep a record and index of all of its resolutions and ordinances.

No ordinance or resolution shall be passed or become effective without receiving the affirmative votes of at least four (4) members of the Board.

To constitute an ordinance a bill must, before final action thereon, be passed to print and published with the ayes and noes at least once in the official newspaper of the City. Between the first and final readings at least five (5) days shall elapse. The enacting clause of all ordinances passed by the Board shall be substantially in these words:

Be it ordained by the Board of Port Commissioners of the City of Oakland as follows:

All ordinances shall be signed by the President or Vice-President of the Board and attested by the Secretary.

A certified copy of each ordinance adopted by the Board shall be forthwith filed with the City Clerk, and the City Clerk shall keep a record and index thereof which shall at all times be open to public inspection. (Amended by: Stats. November 1988.)

Section 705. Ordinances Required in Certain Cases. All proceedings for the acquisition of real property by purchase, condemnation, or otherwise, or the granting of any lease longer than one (1) year, the fixing, regulating, and altering schedules of rates, dockage, wharfage, tolls, and charges for all public-owned docks, piers, wharves, slips and other facilities, and for services rendered by the Port Department, and the adoption of all general rules and regulations of the Board, excepting administrative regulations of a temporary nature, shall be taken by ordinance. (Amended by: Stats. November 1988.)

Section 706. Powers and Duties of the Board. The Board of Port Commissioners shall have the complete and exclusive power, and it shall be its duty for and on behalf of the City:

(1) To sue and defend in the name of the City in all actions and proceedings wherein there is involved any matters within the jurisdiction of the Board.

(2) To make provisions for the needs of commerce, shipping, and navigation of the port, to promote, develop, construct, reconstruct, alter, repair, maintain, equip and operate all water front properties including piers, wharves, sea walls, docks, basins, channels, slips, landings, warehouses, floating and other plants or works, dredge, and reclaim land, construct, equip and operate terminal trackage with sidings and turnouts and railroad connections between docks, piers and other port structures, and connect the same with mainline tracks, and to establish, equip and operate all other facilities or aids incident to the development, protection and operation of the port, as may be deemed proper and desirable in its judgment, and it may modify its plans from time to time as the requirements of commerce, shipping and navigation may demand, and as part of such development and operation to provide for tugs, dredges, fireboats, barges, cold storage plants, and all other publicly owned facilities or appliances incident to the operation of the port, of such number and character, and in such places as the Board may deem feasible and proper.

(3) To take charge of, control, and supervise the Port of Oakland, including all the water front properties, and lands adjacent thereto, or under water, structures thereon, and approaches thereto, storage facilities, and other utilities, and all rights and interests belonging thereto, which are now or may hereafter be owned or possessed by the City, including all salt or marsh or

tidelands and structures thereon granted to the City in trust by the State of California for the promotion and accommodation of commerce and navigation.

(4) To have control and jurisdiction of that part of the City hereinafter defined as the "Port Area" and enforce therein general rules and regulations, to the extent that may be necessary or requisite for port purposes and harbor development, and in carrying out the powers elsewhere vested in the Board.

Provided, however, that with the approval of the Council the Board may relinquish to the Council control of portions of the said area, and likewise, upon request of the Board, the Council may, by ordinance, enlarge the Port Area.

(5) To require owners of water terminal properties and facilities within the port to keep the same in proper condition and repair and to maintain them with especial reference to the reduction of fire hazard or nuisances, and it shall have the right to inspect such terminal facilities at reasonable times.

(6) To exercise all the powers pertaining to the waterfront, wharves, dredging machines, or the port and its operation and maintenance, which have been heretofore conferred upon the City and the Council by Section 106 of this Charter.

(7) To regulate the berthing, anchoring, towing, loading, unloading and mooring of vessels within the port.

(8) To handle, store and recondition all commodities; to sell or otherwise dispose of personal property within its possession or ownership, and, generally, to perform all services customary, necessary or expedient in connection with the development and operation of the port.

(9) To issue receipts, negotiable or otherwise, for property or merchandise in its charge or possession.

(10) To fix all rates, dockage, rentals, tolls, wharfage, and charges, for the use and occupation of the public facilities or appliances of the port, and for services rendered by the Port Department, and to provide for the collection thereof.

(11) To use, for loading and unloading cargo; with the right to collect tolls, dockage and other terminal charges thereon, such portions of the streets of the City ending or fronting upon the water areas of the harbor of said City, as may be used for said purposes.

(12) To build piers, wharves, docks, bulkheads, slips or other structures, across and upon such streets, provided only that access be provided to the public at the shoreward end thereof.

(13) To lend its aid to secure the improvement of navigable tidal waters within or adjacent to the port, where, in its opinion, such improvements are economically justifiable, and in the general carrying out of its powers to cooperate with neighboring cities, other ports, the State of California, or the United States Government, and appear before state, federal and other public legislative and administrative authorities.

(14) To manage the business of the Port and promote the maritime and commercial interests by proper advertisement of its advantages, and by the solicitation of business, within or without the port, within other states or in foreign countries, through such employees and agencies as it may deem expedient.

(15) To acquire in the name of the City by purchase, condemnation, gift, lease, or otherwise take over and hold all lands, property, property rights, leases, or easements, and personal property of every kind, necessary or convenient for the development and operation of the port, or for the carrying out of the powers herein granted to the Board. Whenever the Board determines that any lands owned by the City within its jurisdiction have become unnecessary for port purposes or harbor development, it may in its discretion transfer such lands to the control of the Council, free from all restrictions, or it may sell or exchange such lands, by ordinance subject to the referendum provisions of this Charter.

(16) To purchase materials and supplies.

(17) To enter into contracts, agreements, or stipulations (other than leases) germane to the scope of its powers and duties.

(18) To let all work by contract, or order it done by any labor, as the Board may determine.

(19) To have and exercise the right of eminent domain within the "Port Area" on behalf of and in the name of the City for port purposes, harbor development or the carrying out of any of the powers granted to said Board, and to exclusively find and determine by ordinance adopted by a two-thirds vote of all of its members the public interest and necessity thereof.

(20) To appoint a Port Attorney, whose duty it shall be to pass upon the form and legality of all contracts within the jurisdiction of the Board, give legal advice to the Board on official matters, defend and (subject to direction from the Board) prosecute or compromise all actions at law or in equity and special proceedings for or against the City or any officers thereof in his official capacity, pertaining to matters within the jurisdiction of the Board. The Board shall fix and provide for his compensation.

(21) To employ and appoint an Executive Director, and such other officers, employees and agents as may be necessary in the efficient and economical carrying out of its functions and to prescribe and fix their duties, authority and compensation, and to require such officers, employees and agents to give a bond in such an amount as the Board may require for the faithful discharge of their duties. All offices and places of employment in the permanent service of the Board shall be created by ordinance duly passed.

(22) To provide and equip offices.

(23) To provide in the Port Area, subject to the provisions of Section 727, for other commercial development and for residential housing development; provided that any residential housing development shall be approved by the Board with the consent of the City Council.

(24) To provide for financing of Port facilities through the issuance of bonds or other forms of debt instruments which are secured by a pledge of, or are payable from, all or any part of the revenues of the Port and/or which may be secured in whole or in part by interests, liens or other forms of encumbrance (other than in or on fee title in land) or lease in property. Such debt instruments shall be issued and sold in such manner and upon such terms and conditions, and shall contain such provisions and covenants, as the Board may fix and establish by the provisions of one or more procedural ordinances. Such debt instruments shall

not constitute a debt, liability or obligation of the City of Oakland and shall be payable exclusively from revenues and other assets of the Port.

(25) To provide for the issuance and sale, or to cause the issuance and sale, of any form of equity instruments or securities which represent interests in property (other than fee title and land) used or owned by the Port and which participate in incidents of ownership of such property; provided, that such property shall not include property of the Port which was owned or used by the Port prior to the date of the adoption of this Section. For the purpose of facilitating the issuance and sale of such equity instruments, the Port is authorized to create and to participate in legal entities, including but not limited to, trusts, corporations and partnerships, and to pledge and grant security interests, liens or other forms of encumbrance or lease in such property (other than fee title in land) to secure the repayment of such equity instruments. Such equity instruments, or combinations of debt and equity instruments, shall be issued and sold, and such entities created, in such manner and upon such terms and conditions, as the Board may fix and establish by the provisions of one or more procedural ordinances. Such equity instruments shall not constitute a debt, liability or obligation of the City of Oakland and shall be payable exclusively from revenues, other funds and property of the Port pledged thereto.

(26) To expend all funds necessary to the carrying out of the powers and duties herein expressed.

(27) To adopt and enforce such ordinances, orders, regulations and practices as are necessary for the proper administration and discharge of its duties and powers, or for the management and government of the port, and its facilities.

(28) To prescribe fines, forfeitures and penalties for the violation of any provision of this Article, or of any ordinance, but no penalty shall exceed Five Hundred Dollars (\$500.00) or six (6) months imprisonment, or both.

(29) To have and exercise on behalf of the City all the rights, powers and duties in respect to the subject matters herein provided for, that are now or which may hereafter be vested in the City, or any of its departments or officers, or which may be provided for by general law.

(30) To do and perform any and all other acts and things which may be necessary and proper to carry out the general powers of the City, or any of the provisions of this Article, and to exercise all powers not in conflict with the Constitution of the State, or with this Charter, germane to the scope of its powers, purposes and duties. **(Amended by: Stats. November 1988.)**

Section 707. Operation of Facilities. Notwithstanding any other provision of this Charter to the contrary, the Board shall not be required to directly operate all of the properties, facilities and utilities under its control or jurisdiction, and shall have the power to authorize the operation of any of such properties, facilities and utilities by a private person, firm, association or corporation, whether by lease, franchise, license, assignment, permit or otherwise, upon such terms and conditions as the Board shall prescribe, which terms and conditions shall include control over the rates, charges and practices of said private party to the extent permitted by law. **(Amended by: Stats. November 1988.)**

Section 708. Building Permits. No person or persons shall construct, extend, alter, improve, erect, remodel or repair any pier, slip, basin, wharf, dock

or other harbor structure, or any building or structure within the "Port Area" without first applying for and securing from the Board a permit so to do, in accordance with the rules and regulations adopted by it. In approving or denying the right to said permit, the Board shall consider the application therefor, the character, nature and size and location of the proposed improvement, and exercise a reasonable and sound discretion in the premises.

Provided, however, that applications for building permits pertaining to privately owned property within the "Port Area" shall be made to the Executive Director who shall consider and act upon them in the same manner as applications for such permits made to the Board. Any person excepting to any denial, suspension or revocation of a permit applied for or held by him pursuant to the provisions of this section, or any person excepting to the granting of, or to the refusal to suspend or revoke a permit applied for or held under the provisions of this section, may appeal to the Board by filing with the Secretary a written notice of such appeal setting forth the specific grounds thereof. Such notice must be filed within fourteen (14) days after notice of such denial, suspension, revocation or granting, or refusal to suspend, revoke or grant, such permit, constituting the basis of such appeal, but in no event later than thirty (30) days after the date of the denial, suspension, revocation or granting of the permit. The Secretary shall forthwith set said matter for hearing before the Board and cause notice thereof to be given (1) to the appellant, and (2) to the adverse party or parties, or to the attorney, spokesman or representative thereof, not less than five (5) days prior to such hearing. At such hearing the appellant shall show cause, on the grounds specified in the notice of appeal, why the action excepted to should not be approved. The Board may continue such hearing from time to time, and its findings and conclusions on the appeal shall be final and conclusive in the matter.

Such permit issued by the Board or the Executive Director shall be in addition to any permit which may be required by law from the Building Inspector of the City. (Amended by: Stats. November 1988.)

Section 709. **Leases.** The Board shall have the power to make and enter into any lease of any properties belonging to or possessed by the City under its jurisdiction for a term of not to exceed sixty-six (66) years, provided that all leases made shall be subject to referendum. (Amended by: Stats. November 1988.)

Section 710. **Contracts.** All contracts shall be made and entered into in accordance with the conditions and procedures established by the Board, but subject to bid limit established by the Council pursuant to the provisions of Sections 807 and 808 of this Charter. All powers and duties therein conferred or imposed upon the Council or the City Attorney are, in relation to all matters connected with the Port, hereby conferred and imposed respectively upon the Board and its attorney. Plans and specifications at the time of publication of notice inviting such bidding must be on file in the office of the Board, subject to public inspections. (Amended by: Stats. November 1988.)

Section 711. **Supervision of Leases, etc.** The Board shall take over and control, and shall have the power to grant, all leases, concessions, easements, privileges, spur tracks and other permits, wharfing-out rights, and waterfront or other franchises relating to the harbor or port and located within the "Port Area"

and receive the income therefrom, but this shall not include franchises for the construction and maintenance of railroads, power lines, gas mains and other utilities of a general nature which may extend through other portions of the City into the Port Area and which are within the jurisdiction of the Council pursuant to the provisions of Article X of this Charter, and subject to the supervision of the City Manager.

It shall be the duty of the Board to see that all provisions of such leases, concessions, easements, privileges, permits, rights or franchises within its jurisdiction are faithfully observed, and it may cause to be instituted such actions or proceedings in the name of the City as may be necessary to enforce the provisions thereof, or to revoke, cancel, or annul them when they have become forfeitable in whole or in part, or are illegal, or void or voidable. (Amended by: Stats. November 1988.)

Section 712. Restrictions of Powers of Council. No franchise shall be granted, no property shall be acquired or sold, no street shall be opened, altered, closed or abandoned, and no sewer, street, or other public improvement shall be located or constructed in the "Port Area," by the City of Oakland, or the Council thereof, without the approval of the Board. (Amended by: Stats. November 1988.)

Section 713. Public Streets. Whenever the Board shall determine that it is necessary to open, close, improve, alter or vacate a public street or part of a public street within the "Port Area," a certified copy of the resolution so determining such necessity shall be filed by the Board in the Office of the City Clerk, with the request that the City Manager and the Council initiate and carry to completion the proceedings necessary to effect said proposal. (Amended by: Stats. November 1988.)

Section 714. Personnel System. All permanent places of employment in and under the Board shall be included within the personnel system of the City established pursuant to and subject to the provisions of Article IX of this Charter, except the Executive Director and his two principal assistants, the Secretary of the Board, the Port Attorney and Legal Assistants, chief wharfinger, field and traffic representatives, and all persons employed in the physical or mechanical handling, moving or checking of cargo and freight. The exemption of such personnel from the operation of civil service rules shall not in any way affect such pre-existing civil service rights as such employee may hold. (Amended by: Stats. November 1988.)

Section 715. Annual Budget. The Board shall annually, on or before the fourth Monday of May, or not less than one week prior to the submission of the annual appropriation ordinance by the City Manager, should the Council advance the date therefor, but not later than the third Monday of July, carefully prepare a budget setting forth the estimated receipts of the Port, and revenue from other sources, for the ensuing year, and the sums of money necessarily required for the administration of the department, and for maintenance, operation, construction and development of the port and its facilities for the ensuing year, and stating the amount necessary to be raised by tax levy for said purposes. Said budget when so prepared, shall be certified by the President and Secretary of the Board, and a

certified copy thereof shall, on or before said date, be filed with the Council, one with the City Manager, and one with the Auditor. (Amended by: Stats. November 1988.)

Section 716. Tax Levy Funds. In the event that said Port budget, as provided for in the foregoing section, shall request or provide for the allocation or appropriation to the Port by the Council of any funds raised or to be raised by tax levy or in any manner to be obtained from general revenues of the City, or shall request the incurring or payment of any financial obligation by the City for the Port's use and benefit, or shall not provide for Board servicing of existing or future general obligation bonds of the City issued for Port purposes, the Council shall have the authority to reject said budget and to require it to be revised to meet with Council approval, subject, however, to the Board's covenants with the holders of all of the then outstanding revenue bonds issued by the Board.

The Treasurer shall keep all Port funds separate from other funds in his possession, and the Board shall have the exclusive management and disbursement of the same. (Amended by: Stats. November 1988.)

Allocation of Funds.

Section 717 (1). All Port facilities, airport facilities and terminal facilities of any kind or character are hereby consolidated and shall be operated as a single project by the Board in the interest of transportation by land, by sea and by air, it being hereby found and determined that transportation facilities of all classes implement and augment each other to such an extent that the same must in the public interest be operated singly and under one central supervision and control. Wherever in this Charter the terms "port", "project", or "facilities" are used, the same shall include all facilities under the jurisdiction of the Board, irrespective of whether the same shall be port or airport facilities or other real or personal property or equipment of the Port and related improvements, structures or facilities. (Amended by: Stats. November 1988.)

Section 717 (2). All moneys once apportioned or appropriated to the Board, including, without limiting the generality of the foregoing, all moneys heretofore apportioned or appropriated to and now under the control of the Board, shall be and remain under the control and order of and shall be expended by the Board for the purpose for which apportioned or appropriated and shall be kept separate and apart from all other moneys of the City or the Board. All surplus moneys which, in the judgement of the Board, are not needed for the purpose for which apportioned or appropriated, shall be allocated to and deposited in the Revenue Fund provided for in Section 717 (3). (Amended by: Stats. November 1988.)

Section 717 (3). All income and revenue from the operation of the port or from the facilities of the port, of whatever kind or nature, and all net income from leases or any other source of income or revenue, including, without limiting the generality of the foregoing, all such income and revenue now under the control of the Board, shall be and remain under the control and order of and shall be expended by the Board; provided that all such income and revenue shall be allocated to and deposited in a special fund in the City Treasury (which is

hereby created) designated "Port Revenue Fund" and shall be kept separate and apart from all other moneys of the City or the Board and shall be used and applied for the following purposes and in the following order of priority, to wit:

First: For the payment, as the same become due and payable, of the principal of and interest on any or all general obligation bonds of the City of Oakland heretofore and hereafter issued for port purposes, but only to the extent required by the Constitution of the State of California or otherwise as determined by resolution of the Board.

Second: For the payment of the principal of and interest on revenue bonds, or other evidences of indebtedness payable solely from revenues as in Section 718 provided, which are due or become due during the fiscal year in which the revenues in said funds, or either thereof, are received or are to be received, together with reserve fund payments, sinking fund payments or similar charges in connection with such revenue bonds due or to become due in such fiscal year, including all payments required to be made pursuant to the terms of any resolution authorizing the issuance of revenue bonds, or required by the terms of the contract created by or upon the issuance of revenue bonds.

Third: For the payment of all costs of maintenance and operation of the facilities from or on account of which such money was received. General costs of administration and overhead of the Board not directly chargeable to each facility under its control shall be apportioned fairly by the Board, upon such reasonable basis as it may determine, to each such facility.

Fourth: For defraying the expenses of any pension or retirement system applicable to the employees of the Board.

Fifth: For necessary additions, betterments, improvements, repairs or enlargements of any facilities, and, to the extent determined by a resolution or resolutions of the Board, for replacements, renewals or reconstruction of any facilities.

Sixth: For establishing and maintaining reserve or other funds to insure the payment on or before maturity of any or all general obligation bonds of the City now outstanding or hereafter issued for any facility under the control of the Board, but only to the extent required by the Constitution of the State of California or otherwise as determined by resolution of the Board.

Seventh: For establishing and maintaining reserve or other funds to insure the payment on or before maturity of any or all revenue bonds of the Board hereafter issued.

Eighth: For establishing and maintaining such other reserve funds pertaining to the facilities of the Board as shall be determined by a resolution or resolutions of the Board.

Ninth: For transfer to the General Fund of the City, to the extent that the Board shall determine that surplus moneys exist in such fund which are not then needed for any of the purposes above stated. (Amended by: Stats. November 1988.)

Financing of Harbor and Airport Operations.

Section 718 (1). **General Obligation Bonds of the City.** The City of Oakland may from time to time incur general obligation bonded indebtedness in the manner provided by law for the acquisition, construction or completion of any

port facilities or improvements of the Port of Oakland, including land, rights of way and air easements. The proceeds from the sale of any general obligation bonds now authorized, or which may hereafter be authorized, for any such purposes, shall be under the control of, and shall be expended by, the Board for the objects and purposes for which such general obligation bonded indebtedness was incurred. Whenever, in the opinion of the Board, it is desirable for the City of Oakland to incur additional general obligation bonded indebtedness for any project within the jurisdiction or control of the Board, the Board shall prepare tentative plans, estimates and bond retirement schedules and submit its recommendations in writing to the City Council, which shall thereupon take such action as it deems advisable to reject or carry out such recommendations. (Amended by: Stats. November 1988.)

Section 718 (2). **Methods of Financing Not Exclusive.** Nothing in this Section 718 contained shall in any way abridge, control, limit, restrict or revoke the power of the electors of the City of Oakland to vote for and cause to be authorized and issued general obligation bonds of the City of Oakland for the acquisition, construction or completion of any project herein defined, or any additions thereto or betterments or improvements thereof, irrespective of whether or not revenue bonds for such purpose have been, or may thereafter be issued hereunder, and nothing herein contained shall prevent the financing of any project or any additions, betterments or improvements thereof from any other funds which may be legally available for that purpose. Revenue bonds authorized to be issued hereunder shall not be subject to charter limitations as to the amount of general obligation bonded indebtedness of the City of Oakland nor be taken into consideration in determining the amount of general obligation bonded indebtedness which the City of Oakland is authorized to incur, and the issuance of revenue bonds as in this Article VII provided shall be deemed to constitute a supplemental and additional method of providing funds for the financing of harbor, airport or other real or personal property or equipment of the Port and related improvements, structures or facilities. Such revenue bonds shall be issued in the name of the Board of Port Commissioners of the City of Oakland and shall constitute obligations only of the Board, payable in accordance with their terms from revenues of any project, as in this Article VII authorized. (Amended by: Stats. November 1988.)

Section 718 (3). **Rates, Tolls and Charges.** Without limiting any power in this Charter conferred upon the Board, the Board has power for any of the purposes of this Section 718 to fix rates, tolls, fees, rentals or charges for the use of the facilities provided by any project, or for any services rendered in connection therewith, and to alter, change or modify the same at its pleasure, subject to any contractual obligation which may be entered into by the Board with respect to the fixing of such rates, tolls, fees, rentals or other charges; and, by a resolution of issue or otherwise, to enter into covenants to increase rates, tolls, fees, rentals or other charges from time to time; provided, however, that any person shall be permitted to use or operate any facilities provided by any project only upon payment of the regularly established charge therefor, except as may be otherwise specifically provided in a resolution of issue. All rates, fees, rentals and other

charges shall be paid only in such coin or currency as on the date of payment is legal tender for public and private debts. (Amended by: Stats. November 1988.)

Section 718 (4). **Authorization of Revenue Bonds.** Each issue of revenue bonds shall be authorized by the Board by a resolution of issue adopted by the affirmative votes of at least five (5) members of the Board at a duly assembled meeting. Each resolution of issue shall prescribe the purpose or purposes for which, and the terms and conditions on which, said revenue bonds are to be issued. (Amended by Stats. November 1988.)

Section 718 (5). **Validity of Revenue Bonds Not Affected by Actions of City or Boards Relative to Project.**

- (a) The validity of the authorization and issuance of any revenue bonds by the Board shall not be dependent on or affected in any way by:
 - (i) Proceedings taken by the City or the Board for the acquisition, construction or completion of any project or any part thereof;
 - (ii) Any contracts made in connection with the acquisition, construction, or completion of any project; or
 - (iii) The failure to complete any project for which bonds are authorized to be issued. (Amended by: Stats. November 1988.)

Section 718 (6). **Rights of Bondholders.** Except as provided otherwise in any resolution of issue, the holder of any bond issued pursuant to this Section 718 may, by mandamus or other appropriate proceedings, require and compel the performance of any of the duties imposed upon the Board or the City or the Council or any official or employee of the Board or the City or assumed by any thereof in connection with the acquisition, construction, completion, operation, maintenance, repair, reconstruction or insurance of any project, or the collection, deposit, investment, application and disbursement of rates, fees and charges derived from the operation and use of any project and all other revenues, or in connection with the deposit, investment or disbursement of the proceeds received from the sale of the bonds under this Section. The enumeration of such rights and remedies does not, however, exclude the exercise or prosecution of any other rights or remedies available to the holders of bonds issued pursuant to this Section 718. (Amended by: Stats. November 1988.)

Section 718 (7). **Section Confers Complete Authority.** The provisions of this Section constitute full and complete authority for the issuance of revenue bonds as herein provided by the Board and no other procedure, or proceedings, consents, approvals, orders or permission from the Council or any municipal officer or board of the City of Oakland, shall be required for the acquisition, construction or completion of any project, or the issuance of any revenue bonds under this Section 718 except as specifically provided in this Section 718. The powers and authorities conferred by this Section are in addition to and supplemental to all other powers and authorities conferred upon the Board. (Amended by: Stats. November 1988.)

Section 719. **Moneys on Hand.** All moneys in the Harbor Maintenance and Improvement Fund at the time of the adoption of this Charter and all other revenues and funds in the possession of the City set aside for port purposes, shall

immediately be under the jurisdiction and control of the Board. (Amended by: Stats. November 1988.)

Section 720. **Duties of Treasurer.** All moneys under the control of the Board shall be immediately paid over to the Treasurer of the City of Oakland, who shall have the care and custody of said funds, and shall keep separate accounts thereof, and pay out the same, as provided in this Charter. (Amended by: Stats. November 1988.)

Section 721. **Revolving Fund.** The Board shall have authority to set up by ordinance a sufficient contingent or revolving fund from which the Executive Director shall be entitled to draw warrants directly upon the Treasurer for the prompt payment of transient laborers, and the Treasurer shall upon presentation of same, pay such warrants. Statements of such payments shall be filed with the Board at its regular meetings and shall be approved by the Board and endorsed by the President and Secretary thereof, and audited as in the case of ordinary claims. (Amended by: Stats. November 1988.)

Section 722. **Additional Powers.** The City Council, subject to the approval of the Board, may by ordinance confer upon and delegate to the Board, from time to time, such additional powers and duties which may be vested in it, and which it may deem necessary or convenient to carry out the general purposes of such Board. (Amended by: Stats. November 1988.)

Section 723. **Liberal Construction.** If any section, clause, word, or provision of this Article shall be held unconstitutional, the other sections, clauses, words, or provisions of this Article shall not be affected thereby. All the provisions of this Article shall be liberally construed. (Amended by: Stats. November 1988.)

Section 724. The provisions of this Article shall supersede and control all other provisions of the Charter in conflict therewith. To all other extent, the powers, duties, and functions heretofore vested in the Council, or any of the officials, boards, or departments of the City, shall be unimpaired. (Amended by: Stats. November 1988.)

Section 725. **Port Area.** The "Port Area" under the exclusive jurisdiction of the Board of Port Commissioners shall be the same area that existed immediately prior to the adoption of this Section, as it has been defined by Charter and by ordinance, and as it may hereafter be altered by Council ordinance in accordance with and upon the recommendation of the Board, or by amendment of this Charter. (Amended by: Stats. November 1988.)

Section 726. Without denial or disparagement of other powers now held by or that may hereafter be given to the City of Oakland or its legislative bodies under or by the Constitution or the laws of the State of California, the City Council and Board of Port Commissioners are hereby authorized and empowered to grant and convey all or any portion of or interest in the tidelands and submerged lands located in the Middle Harbor area of the City, lying between the Estuary of San Antonio and Seventh Street, and westward of Bay Street extended southerly, to the United States of America for public and governmental (including military or naval) purposes, subject to such terms, conditions, and reservations, if any, as the Council and Board shall deem proper. No ordinance or other measure passed in respect to any such grant shall be subject to the referendum provisions of this Charter. All proceedings heretofore taken to accomplish such a

grant are hereby ratified, confirmed and approved, and the completion thereof and making of such grant is hereby authorized. (Amended by: Stats. November 1988.)

Section 727. **Land Use and Development.** The Board shall develop and use property within the Port Area for any purpose in conformity with the General Plan of the City. Any variation therefrom shall have the concurrence of the appropriate City board or commission; provided, that the Board may appeal to the Council for final determination of adverse decisions of such board or commission, in accordance with uniform procedures established by the Council. (Amended by: Stats. November 1988.)

ARTICLE VIII FISCAL ADMINISTRATION

Section 800. **Fiscal Year.** The fiscal year for the City shall commence on the first day of July of each year. (Amended by: Stats. November 1988.)

Section 801. **Budget.** Each department, office and agency of the City shall provide in the form and at the time directed by the Mayor and City Manager all information required by them to develop a budget conforming to modern budget practices and procedures as well as specific information which may be prescribed by the Council. Under the direction of the Mayor and Council, the City Manager shall prepare budget recommendations for the next succeeding fiscal year which the Mayor shall present to the Council, in a form and manner and at a time as the Council may prescribe by resolution. Following public budget hearings, the Council shall adopt by resolution a budget of proposed expenditures and appropriations necessary therefor for the ensuing year, failing which the appropriations for current operations of the last fiscal year shall be deemed effective until the new budget and appropriation measures are adopted. (Amended by: Stats. November 1988.)

Section 802. **Levy of Property Tax.** Not later than the date set by state law for this purpose, the Council shall by resolution fix the rate of property tax to be levied and levy the tax upon all taxable property in the City. Such rate shall be adequate to meet all obligations of the City for the fiscal year, taking into account estimated revenue from all other sources. Should the Council fail to fix the rate and levy taxes within the time prescribed, the rate for the next preceding fiscal year shall thereupon be automatically effective, and a tax at such rate shall be levied upon all taxable property in the City for the current fiscal year. (Amended by: Stats. November 1988.)

Section 803. **Cash Pool Operations.** Municipal obligations may be financed by cash pool operations and utilization of a check system (as contrasted with a warrant system). Except for those funds restricted by bond indentures, state or federal law, other sections of this Charter or specific conditions of the legislation creating them, temporary transfers between funds are permitted. (Amended by: Stats. November 1988.)

Section 804. **Funds.** The Council shall create, reduce or eliminate such Funds as are required for proper accounting and fiscal management, or required

as a condition of receiving funds from any other government, or to fulfill any bonded or other contractual obligation of the City. (Amended by: Stats. November 1988.)

Section 805. **Accounting System.** The City Manager shall establish and maintain a system of financial procedures, accounts and controls for the City government and each of its departments, offices and agencies which shall conform to generally accepted principles of accounting which shall be adequate to account for all monies on hand and for all income and expenditures in such detail as will provide complete and informative data concerning the financial affairs of the City and in such manner as the Council may prescribe and as will be readily susceptible to audit and review. (Amended by: Stats. November 1988.)

Section 806. **Receipts and Expenditures.** All monies received by the City shall be deposited in the City Treasury, and no monies shall be disbursed from the treasury without the approval of the City Manager or of another officer duly authorized by him. No expenditure of City funds shall be made except for the purposes and in the manner specified by an appropriation of the Council; nor shall any disbursement be made unless obligations are properly supported by accounting evidence, sufficient money is available in the City Treasury and there is an adequate unencumbered appropriation balance in the proper account classification. The City Manager or other officer authorized by him to make disbursements shall be represented by the City Attorney in all legal matters in connection therewith, except as provided otherwise in Section 401. (Amended by: Stats. November 1988.)

Section 807. **Goods and Services.** The City Manager or an officer authorized by him shall purchase or contract for equipment, materials, supplies and public works required by the City in the manner prescribed by ordinance, except as otherwise provided herein. (Amended by: Stats. November 1988.)

Section 808. **Bids and Awards.** The Council shall establish by ordinance the conditions and procedures for any purchase or contract, including advertising and bidding requirements, and may provide that all bids may be rejected. The ordinance may provide that under specified conditions, which the Council must find and determine exist in each applicable instance, advertising and bidding may be dispensed with. (Amended by: Stats. November 1988.)

Section 809. **Annual Audit.** The Mayor upon approval of the Council shall engage during the first month of each fiscal year an independent certified public accountant who shall examine and report to the Council on the annual financial statement of the City. He shall have free access to the books, records, inventories and reports of all officers and employees who receive, handle, or disburse public funds, and of such other officers, employees, or departments as the Council may direct. He shall submit his audit as soon as practicable after the closing of the books for the fiscal year for which he is engaged. Copies of such audit reports shall be filed with the Council, and shall be available for public inspection and review. (Amended by: Stats. November 1988.)

Section 810. **Deposit and Investment.** The City Manager shall arrange for the deposit in the City Treasury or in designated banks of all funds collected by any department or agency of the City, according to a schedule prescribed by him. After taking into account the amounts required to meet the current and pending

requirements of the City, the City Manager may arrange for the term deposit or investment in securities authorized by law of any balances available for such purpose and the yield therefrom shall be credited as revenue to the general fund unless otherwise provided by law or directed by the Council. (Amended by: Stats. November 1988.)

Section 811. **Official Bonds.** The Council shall determine by ordinance which officers and employees shall be subject to group or individual bonds to insure the faithful performance of official duties, shall fix the amount of such bonds and shall provide payment of the premium of such bonds by the City. (Amended by: Stats. November 1988.)

Section 812. **Revenue Bonds.** The Council may issue revenue bonds for any lawful purpose in such manner and upon such terms and conditions as it may fix and establish by the provisions of a procedural ordinance; provided, however, that in the procedure for the issuance of any such bonds for the acquisition, construction or establishment of any gas, electric or telephone system, the general laws of the State of California in force at the time such proceedings are taken shall be observed and followed. (Amended by: Stats. November 1988.)

ARTICLE IX PERSONNEL ADMINISTRATION

Section 900. **Personnel Policy.** It is the policy of the City that there shall be a comprehensive personnel system based on merit and such system shall be continued and maintained for the purpose of providing an equitable and uniform procedure for dealing with personnel matters; to serve the mutual interests of the people, the City as an employer and its employees through accepted modern concepts and practices of public personnel administration; to attract to municipal service the best and most competent person available; to assure that appointments will be based on merit and fitness as ascertained by practical competitive examination and by records of achievement; and to provide the employees security of tenure, with advancement or promotion within the service where practicable from among employees having appropriate qualifications, free of discrimination, subject to their adherence to established standards of performance and conduct, all as more particularly hereinafter set forth in this article. (Amended by: Stats. November 1988.)

Section 901. **Enforcement and Administration.** The provisions of this article, and of the ordinances and rules adopted to give effect thereto, shall be enforced by a Civil Service Board. The Board shall be constituted and appointed as provided in Article VI. The Board shall be responsible for the general supervision of the personnel system, without impairment of the responsibility and duty of the City Manager, department heads and other supervisory personnel to exercise the administrative discretion vested in them by this Charter, or by ordinance. (Amended by: Stats. November 1988.)

Section 902. **The Competitive Service.** The Council may establish departments, divisions, offices and positions of employment by ordinance, and may change or abolish the same and prescribe their powers, functions and duties. The

Council may by resolution provide for temporary employment of services when required. The competitive Civil Service shall include all offices and employments in the City government except:

- (a) Offices required by this Charter to be filled by election or to be appointed by the Mayor and City Council.
- (b) One secretary and all professional and administrative assistants in the office of the City Manager; the Mayor's secretary and an assistant and such other staff as authorized by Council; one secretary and one assistant to the City Attorney and the Auditor respectively; and the heads of such other departments and an assistant to each as may be provided for by ordinance. The City Manager, the Mayor, the City Attorney, and the Auditor shall respectively appoint such exempt personnel.
- (c) Department heads, one secretary to the executive director, the secretary of the board, commercial representatives and freight and cargo handlers and checkers employed by the Port Department; also such others engaged in the handling of ships and shipping as are found by both the Board of Port Commissioners and the action of the Civil Service Board as provided for pursuant to Article VI to hold positions peculiar to the operations of the Port as a commercial enterprise.
- (d) Part-time employees who are regularly employed for less than one-half the established working hours throughout the year; or those who are employed in any seasonal employment for not more than 120 days in any consecutive 12 months.
- (e) Individuals or organizations engaged by contract after a finding by the Council or the Board of Port Commissioners, as the jurisdiction may be, that the service is of a professional, scientific or technical nature and is temporary in nature, or after finding by vote of two-thirds of the members of the Council or said Board that the performance of the service by contract, regardless of nature or term, is in the public interest because of economy or better performance; provided, that no such contract for service shall result in the loss of employment or salary by any person having permanent status in the competitive service.
- (f) Such additional positions as may be excepted upon the recommendation of the Council, approved by the Civil Service Board as provided for pursuant to Article VI. (Amended by: Stats. November 1988.)

Section 903. Provisional Appointments. When there is no appropriate eligible list, provisional appointments to positions in the competitive civil service may be made pending the creation of such lists, but such provisional employment may not extend beyond the creation of the list nor in any event may such employment be renewed or extended beyond 120 days. (Amended by: Stats. November 1988.)

Section 904. Personnel Ordinance. The Council shall by ordinance provide a modern system of personnel administration for the competitive civil service. (Amended by: Stats. November 1988.)

Section 905. **Continuation.** Pending adoption of the ordinance required in Section 904, the provisions of Article IX, as the same appeared in the Charter immediately prior to the adoption of this section, shall continue in full force and effect except as the same may hereafter be changed by amendment thereof in the manner provided by law for the amendment of charter provisions. Said provisions of Article IX shall cease to have any force or effect immediately upon the adoption of the ordinance required in Section 904. The rules of the Civil Service Board shall remain effective until modified as authorized by ordinance pursuant to Article VI. (Amended by: Stats. November 1988.)

Section 906. **Improper Political Activity.** No city employee shall engage in or participate in any political activity contrary to any general law applicable to such employee. No city officer or official shall solicit or obtain from any city employee a contribution of services, money or any other thing of value, for any election or campaign purpose. (Amended by: Stats. November 1988.)

Section 907. **Nepotism.** The Mayor or City Council shall not appoint as an employee or officer, to receive any compensation from the City, any person who is a relative by blood or marriage within the third degree of the Mayor or anyone or more of the members of the Council, nor shall the City Manager or any other appointing authority appoint to any such position any relative of his or of the Mayor or any member of the Council within such degree of kinship. (Amended by: Stats. November 1988.)

Section 908. **Social Security.** Provisions for an employee retirement system shall not be construed to prevent the City and its employees from participating in any state or national social security system to the extent permitted by law for public employees. (Amended by: Stats. November 1988.)

Section 909. **Authority to Join Pension System.** Notwithstanding the provisions of Section 1209 the City, by and through its Council, may join or arrange for reciprocity of membership in, or continue as a contracting agency in, any retirement or pension system or systems existing or hereafter created under state or federal law to or in which municipalities and municipal officers or employees are eligible, either for all such officers and employees, or for less than all on the basis of a reasonable classification, provided that no employee or officer or classification thereof shall be unreasonably omitted from all systems referred to in this section or in Section 908 of this Charter. (Amended by: Stats. November 1988.)

Section 910. **Arbitration for Uniformed Members of the Police and Fire Departments.**

- (a) It is hereby declared to be the policy of the voters of the City to endeavor to establish and maintain, without labor strife and dissension, wages, hours, and other terms and conditions of employment for the uniformed members of the Police and Fire Departments which are fair and comparable to similar private and public employment. To such purpose, the voters of the City hereby recognize the efficiency of and adopt the principle of binding arbitration as an equitable alternative means to arrive at a fair resolution of terms of wages, hours, and other

terms and conditions of employment for such employees when the parties have been unable to resolve these questions through negotiations.

- (b) Pursuant to the public policy hereinabove declared, the City or the recognized employee organization for the uniformed members of the Police and Fire Departments may, as the result of an impasse after meeting and conferring in good faith on matters within the scope of representation as required by applicable State law, refer any such matters which are unresolved to binding arbitration under the provisions of this Section; except that the Charter provisions concerning the Police and Fire Retirement System and such other provisions of this Charter which specifically govern wages, hours and other terms and conditions of employment of uniformed members of the Police and Fire Departments shall not be subject to change by arbitration. In any such arbitration, the arbitrator is directed to take into consideration the City's purpose and policy to create and maintain wages, hours and other terms and conditions of employment which are fair and comparable to similar private and public employment and which are responsive to changing conditions and changing costs and standards of living. The arbitrator shall also consider: the interest and welfare of the public; the availability and sources of funds to defray the cost of any changes in wages; hours and conditions of employment; and all existing benefits and provisions relating to wages, hours and terms and conditions of employment of the uniformed members of the Police and Fire Departments, whether contained in this Charter or elsewhere.
- (c) Any unresolved dispute or controversy arising under the provisions of this Section, or any unresolved dispute or controversy pertaining to the interpretation or application of any negotiated agreement covering uniformed members of the Police and Fire Departments shall be submitted to an impartial arbitrator. Representatives designated by the City and representatives of the recognized employee organization affected by the dispute or controversy shall select the arbitrator. In the event that said parties cannot agree upon the selection of the arbitrator within five days from the date of any impasse, then the California State Conciliation Service shall be requested to nominate five (5) persons, all of whom shall be qualified and experienced as labor arbitrators. If the representatives of the recognized employee organization and the City cannot agree on one of the five to act as arbitrator, they shall strike names from the list of said nominees alternately until the name of one nominee remains who shall thereupon become the arbitrator. The first party to strike a name from the list shall be chosen by lot. Every effort shall be made to secure an award from the impartial arbitrator within thirty (30) calendar days after submission of all issues to him.
- (d) The arbitration proceedings herein provided shall be governed by Sections 1280, et seq., of the California Code of Civil Procedure. The

arbitrator's award shall be submitted in writing and shall be final and binding on all parties. The City and the affected employee organization shall take whatever action is necessary to carry out and effectuate the award. The expenses of arbitration, including the fee for the arbitrator's services, shall be borne equally by parties. All other expenses which the parties may incur individually are to be borne by the party incurring such expenses.

- (e) Nothing herein shall be construed to prevent the parties from submitting controversies or disputes to mediation, fact-finding or other reasonable method to finally resolve the dispute should the City and the recognized employee organization in the controversy or dispute so agree. An impasse may be declared by either the City or the recognized employee organization in the event the parties fail to reach an agreement on matters within the scope of representation after meeting and conferring in good faith as required by applicable State law, or after other mutually agreed-upon settlement methods fail to result in agreement between the parties. (Added by: Stats. 1973. Amended by: Stats. November 1988.)

ARTICLE X FRANCHISES, LICENSES, PERMITS, LEASES AND SALES

Section 1000. **Franchises, Licenses, Permits.** The Council shall have authority to grant or issue franchises, licenses and permits for the transaction of business or the providing of services, or for the use of public streets or other public places, and to provide by ordinance the procedure for the granting or issuing thereof, the taxes, charges, fees or other compensation to be paid therefor and the penalties for the violation thereof. (Amended by: Stats. November 1988.)

Section 1001. **Leases, Sales.** The Council shall have authority to lease or sell real and personal property owned or controlled by the City in accordance with such uniform procedure as it shall adopt by ordinance, provided, however, that no lease of real property shall be for a term in excess of sixty-six years. (Amended by: Stats. November 1988.)

Section 1002. **Right to Acquire.** No franchise grant shall be construed to impair or affect the right of the City, acting pursuant to law, to acquire the property of the grantee either by purchase or through the exercise of the right of eminent domain. (Amended by: Stats. November 1988.)

ARTICLE XI ELECTIONS

Section 1100. **Nominating Election.** Beginning in 1990, Municipal Nominating Elections for the nomination of officers and for such other purposes as the Council may prescribe shall be held in the City on the first Tuesday after

the first Monday in June in each even-numbered year. (Amended by: Stats. June 1988 and November 1988.)

Section 1101. **General Municipal Elections.** Beginning in 1990, General Municipal Elections for the election of officers and for such other purposes as the Council may prescribe shall be held in the City on the first Tuesday after the first Monday in November in each even-numbered year. (Amended by: Stats. June 1988 and November 1988.)

Section 1102. **Special Municipal Elections.** All other municipal elections that may be held by the authority of this Charter or of any law shall be known as Special Municipal Elections. (Amended by: Stats. November 1988.)

Section 1103. **Election Procedure.** The mode, manner, form and procedure for nominations, qualifications, petitions, filing -- including fees therefor and amounts thereof -- and elections, for elective office, may be provided by ordinance. Except as may be otherwise provided by ordinance, declarations of candidacy, nominations for election, all elections and all procedures relating thereto shall be in accordance with the applicable provisions of state law. (Amended by: Stats. November 1988.)

Section 1104. **Initiative, Referendum and Recall.** The People of the City reserve to themselves the powers of initiative and referendum and the recall of elected officials, to be exercised in the manner prescribed by general law of the State. (Amended by: Stats. November 1988.)

ARTICLE XII GENERAL PROVISIONS

Section 1200. **Conflict of Interest.** No officer of the City may participate on behalf of the City in any transaction or activity in which he has a conflict of interest, as such conflict is defined by State Law. The penalty for violation of this section shall be as provided by State Law. (Amended by: Stats. November 1988.)

Section 1201. **Incompatible Employment.** Each officer and employee shall, during his hours of active duty, devote his whole time, attention and efforts to his office or employment, and he may not be required to perform any service except for the benefit of the City. No officer or employee of the City may engage in any employment, activity or enterprise which has been determined to be inconsistent, incompatible or in conflict with his duties or with the duties, functions and responsibilities of the department or other agency in which he is employed. The City Manager, or the City Attorney, or the Auditor, as to personnel under their respective jurisdictions, shall declare the activities which will be considered inconsistent, incompatible or in conflict with, or inimical to, the duties of such personnel as City employees. In making this determination, consideration shall be given to employment, activity or enterprise which: (a) involves the use for private gain or advantage of City time, facilities, equipment and supplies, or the badge, uniform, prestige or influence of one's City office or employment; or (b) involves receipt by the officer or employee of any money or other consideration for the performance of any act required of him as a City officer or employee; or (c) involves the performance of an act in other than his capacity as City officer or

employee which act may later be subject directly or indirectly, to control, inspection, review, audit or enforcement by him or by the agency in which he is employed. (Amended by: Stats. November 1988.)

Section 1202. **Conflict in Office.** The Mayor and members of the Council shall not hold any other municipal office or any other office or employment to receive compensation from the City; or be appointed or elected to any office created by the Council while he is a member thereof, until at least one year shall have expired after the expiration of the term for which he was elected. (Amended by: Stats. November 1988.)

Section 1203. **Gifts and Trusts.** The Council shall have the power to accept gifts and trusts in behalf of the City and to control, manage, dispose of and otherwise administer the same in accordance with their terms. (Amended by: Stats. November 1988.)

Section 1204. **Title to Property.** All real property acquired by the City shall be held in the name of "The City of Oakland." (Amended by: Stats. November 1988.)

Section 1205. **Public Notice.** Except as otherwise provided in this Charter or by general law, the Council shall, by ordinance applying to all agencies of the City, designate the time and conditions under which adequate public notice should be given, through publication or otherwise, of the pending consideration of ordinances, invitations to bid, and awards of contracts or leases, notices of intention to grant franchise, election proceedings and other matters requiring public notice in accordance with this Charter, any ordinance enacted pursuant thereto or general state law. Publication, if required, shall be in an official newspaper designated annually by the Council, which shall be a newspaper printed and published in the City of Oakland and which shall have a daily circulation within the City of at least 25,000. (Amended by: Stats. November 1988.)

Section 1206. **Oath of Office.** Every officer of the City, before entering upon his duties, shall take the following oath and file the same with the City Clerk: "I solemnly swear or affirm that I will support the constitution of the United States, the constitution of the State of California, and the Charter of the City of Oakland, and will truly and to the best of my abilities perform the duties of the office of _____." (Amended by: Stats. November 1988.)

Section 1207. **Oaths and Subpoenas.** Every officer and every member of any Board provided for in this Charter shall, in all matters relevant to his office, have the power to administer oaths and affirmations and to issue subpoenas to compel the production of books, papers and documents and to take testimony on any matter pending before him. If any person subpoenaed fails or refuses to appear or to produce required documents or to testify, said officer or the majority of the members of the board or commission may find him in contempt, and shall have power to take the proceedings in that behalf provided by the general law of the State. (Amended by: Stats. November 1988.)

Section 1208. **Violation.** The violation of any provision of this Charter shall be deemed a misdemeanor and be punishable upon conviction in the manner provided by State Law. (Amended by: Stats. November 1988.)

Section 1209. **Previous Charter Provisions Continued.** Section 91(e) added by Stats. Feb. 1959, Sections 97(f), 33(1) through 33(10), 92-1/2 through 96-3/4%, 100-1/2 through 104(c), 199(d), all the sections of Article XXVI and all the sections of Article XXVII, as the same appeared in the Charter immediately prior to the adoption of this section, are by this reference hereby continued in full force and effect, and ratified, by the adoption of this section as if the same were herein printed and set forth in full. Said sections shall be printed in the appendix to this revised Charter and shall be renumbered therein as sections of said appendix. All sections and articles of the said Charter, as the same existed immediately prior to the adoption of this section, other than the hereinabove specified sections and articles thereof which are ratified and continued in full force and effect by the adoption of this section, are hereby repealed by the adoption of this section. (Amended by: Stats. November 1988.)

Section 1210. **Construction and Separability.** If any provision of this Charter or the application thereof to any person or circumstance is held invalid, the remainder of this Charter and the application of such provisions to other persons or circumstances shall not be affected thereby. (Amended by: Stats. November 1988.)

Section 1211. **Effective Date.** This charter shall take effect upon the filing with the Secretary of State of the concurrent resolution of its approval by the State Legislature. (Amended by: Stats. November 1988.)

Section 1212. **Gender References.** All gender references in this Charter shall be considered neutral in form and context. (Amended by: Stats. November 1988.) 6/90

APPENDIX
TO THE CHARTER OF
THE CITY OF OAKLAND

ARTICLE XIV
POLICE RELIEF AND PENSION FUND

Section 1400. In order to continue in force, and make effectual pensions already existing in favor of the Police Force, the fund heretofore created, known and designated as the Police Relief and Pension Fund shall be continued in effect. The Mayor, the Health Officer, and the President of the Civil Service Board shall hereafter constitute the Board of Trustees of such fund, and the City Treasurer shall be the custodian of said fund. (Amended by: Stats. 1931.)

Section 1401. Any member of the Department who resigns or is discharged from the service previous to retirement, shall have all such sums as have been deducted from his pay and contributed to the Police Relief and Pension Fund pursuant to the provisions of Section 91a* refunded to him plus simple interest at the rate fixed by the Board of Trustees. (Added by: Stats. 1943.)

Section 1402. The said Board of Trustees may retire and relieve from service any aged, infirm, or disabled member of the Department who has arrived at the age of fifty-five years, and who, upon examination by two regularly licensed and practicing physicians appointed by the Board of Trustees for that purpose, may be ascertained to be, by reason of such age, infirmity, or other disability unfit for the performance of his duty. Said Board of Trustees, at the request of any member of the Department who has arrived at the age of fifty-five years, and who shall have served twenty years in the aggregate in the Department, retire and relieve such member making such application. Said Board of Trustees shall, upon the request of any member of the Police Department who has served twenty-five years in the aggregate as a member of said Police Department, retire and relieve said member making such application. Such retired member shall receive from the Police Relief and Pension Fund a pension equal to one-half of the salary attached to the rank held by him one year prior to the date of said retirement, which pension shall be paid in equal monthly installments and shall cease at the death of such member. (Amended by: Stats. 1937.)

Compulsory Retirement At Age Seventy

Section 1403. Notwithstanding any provision contained in this Article, retirement under Section 1402 shall be compulsory upon such member reaching the age of seventy years. (Added by: Stats. 1941.)

Absence By Reason Of War Or Other National Emergency

Section 1404. Absence of a member of the Police Department by reason of service with the armed forces of the United States, either during a war involving the United States as a belligerent or in any other National emergency and for six months thereafter and who is not dishonorably discharged or released therefrom,

* This reference is to the Section or Article so designated in the former Charter.

shall be credited to such member as service for the City for retirement purposes. No contributions to the Police Relief and Pension Fund, for such period of compensation from the City, shall be required of such member.

This section shall be retroactively applied to extend its benefits to such members of the Police Department whose absence commenced prior to its effective date. (Added by: Stats. 1947.)

Section 1405. Any member of the Department who shall become physically disabled by reason of any bodily injury received in the performance of his duty, upon his filing with the Board of Trustees a verified petition, setting forth the facts constituting such disability, and the cause thereof, accompanied by a certificate signed by the Chief of Police, the Captain of the Division to which he belongs, and by two regularly licensed physicians of the City, recommending his retirement upon a pension, on account of such disability, may be retired from the Department upon an annual pension, equal to one-half of the amount of salary attached to the rank which he held one year prior to the date of such retirement, to be paid to him during his life, and to cease at his death. In case his disability shall cease, his pension shall cease, and he shall be restored to the service in the rank he occupied at the time of his retirement.

**Retirement By Action Of Board Of Trustees After
Disability In Performance Of Duty**

Section 1406. Notwithstanding any provisions set forth in Section 1405, the Board of Trustees may on its own motion retire any member, and any matron and substitute matron, under the provisions of Section 1405, who is physically disabled by reason of any bodily injury received in the performance of his or her duty, who upon examination by two regularly licensed and practicing physicians appointed by the trustees for that purpose may be ascertained to be by reason of such disability unfit for the performance of duty, provided, further that such disability shall have continued for one year. (Added by: Stats. 1941.)

**Benefit To Dependents Of Deceased Member Retired For
Disability Incurred In Performance Of Duty**

Section 1407. Notwithstanding any provision set forth in Section 1405, if a retired member, or retired matron or substitute matron, of the Department shall die at any time by reason of bodily injury for which he or she was pensioned, such pension shall not cease but shall continue and shall be paid to his widow or widower to whom he or she was married at the time of such injury, or to his or her orphan child or children, or to his or her parent or parents, in the manner and subject to the provisions of Section 1408(a), (b) and (c), provided, however, a surviving husband shall be entitled to the rights of a widow only if in the opinion of the Board of Trustees he is unable to support himself by reason of physical or mental infirmity and has no other means of support. (Added by: Stats. 1941.)

**Pension To Dependents When Member Dies Of Injury Or
Disability Incurred In Performance Of Duty**

Section 1408. The Board of Trustees shall, out of the Police Relief and Pension Fund, provide for the family of a member of the Department who may die as a result of an injury or disability incurred while in the performance of his duty as follows:

- (a) Should the decedent be married, his widow shall, as long as she shall remain unmarried, be paid a pension equal to one-half of the salary attached to the rank held by the decedent at the time of his death.
- (b) Should the decedent leave no widow, but leave an orphan child or children under the age of eighteen years, or should the decedent leave a widow and child or children under the age of eighteen years, and the widow die without remarrying while such child or children are yet under the age of eighteen years, such child, or children collectively, shall receive a pension equal to one-half of the salary attached to the rank held by the decedent at the time of his death until the youngest child attains the age of eighteen years, provided that no child shall receive any such pension after attaining the age of eighteen years, nor shall any child receive any such pension should he or she marry before reaching the age of eighteen years.
- (c) Should the decedent leave no widow, or no orphan child or children but leave a parent or parents dependent solely upon him for support, such parent or parents so depending shall collectively receive a pension equal to one-half the salary attached to the rank held by the decedent at the time of his death during such time as the Board of Trustees may determine its necessity. (Amended by: Stats. 1941.)

Pension To Dependents When Retired Member Dies From

Non-Service Connected Causes

Section 1409.

- (a) Upon the death of a member of the Department who had been retired under this Article and such death shall occur after the effective date of this section and shall result from causes other than injuries received in or illness caused by or arising out of the performance of duty, two-thirds of such member's pension at the time of death shall be continued regardless of the age of the surviving widow, to dependents of the member in the order of succession and upon the conditions provided in Section 2612.
- (b) There shall be deducted from each monthly installment of pension due to such retired member under the provisions of this article a sum equal to 1-1/2% of such monthly installment which sum shall be retained by the Treasurer of the City and forthwith paid by him into the Police and Fire Retirement Fund.
- (c) The provisions of subdivisions (a) and (b) of this section shall not be applicable to any retired member of the Department who has not within 90 days after the ratification of this section by the State Legislature filed with the Secretary of the Police and Fire Retirement Board said member's written election to be subject to the provisions of said subdivisions. (Added by: Stats. 1955.)

Section 1410. The widow of a member of the Department who was retired for years of service under the provisions of Section 1402 and who died prior to the effective date of Section 1409 from causes other than injuries received in, or illness caused by, or arising out of, the performance of duty, provided such widow was married to the decedent at least one (1) year prior to his retirement and has

remained unmarried since the date of his death, shall receive two-thirds of the decedent's pension. The widow of a member of the Department who died from causes other than injuries received in, or illness caused by, or arising out of, the performance of duty and whose death occurred prior to eligibility for membership in the retirement system created by Article XXVI, and who was not receiving a pension under this Article, but who was eligible for retirement for years of service under Section 1402 shall receive two-thirds of the pension which would have been provided for him by said Section 1402 if he had been retired for years of service at the time of death, provided she has remained unmarried since the date of his death. The pension(s) herein provided for shall commence on the first of the month next following the effective date of this section and shall be paid in equal monthly installments as long as such respective widow(s) shall live and remain unmarried.

This section shall not be construed to provide any payment to such widow for any period of time prior to the first day of the month next following the effective date hereof, except that benefits under this section shall be in addition to any benefits heretofore received by the widow under Section 1411. (Added by: Stats. 1957.)

Section 1411. When a member of the Department shall die from causes other than those specified in Section 1408 after ten years of service, then his widow, and if there be no widow, then his children, and if there be no widow or children, then his mother, if dependent upon him for support, shall be entitled to the sum of One Thousand (\$1,000) Dollars; provided, further, when a member of the Department shall die from causes other than those specified in Section 1408 before retirement or eligibility for retirement, regardless of length of service, then his widow, and if there be no widow, then his children, and if there be no widow or children, then his parents or parent, and if there be none of these, then his estate, shall have and receive a refund of all such sums as have been deducted from his pay and contributed to the Police Relief and Pension Fund, plus simple interest at a rate fixed by the Board of Trustees. When a member of the Department dies at such time as to qualify under both provisions of this Section, the person or representative entitled to receive the payment or refund herein provided shall elect whether the One Thousand (\$1,000) Dollar payment or the refund of salary deductions shall be received, but in no event shall both be paid on account of the same death. (Amended by: Stats. 1943.)

Section 1412. Any person receiving a pension from the Police Relief and Pension Fund, who shall become convicted of a felony, or after notice and an opportunity to be heard shall be found by the Board of Trustees to have become dissipated or an habitual drunkard, or shall become a non-resident of this State except on leave by the Board of Trustees, shall forfeit all right to said pension. (Amended by: Stats. 1941.)

Section 1413. The Board of Trustees may, on notice from the Chief of Police, reward any member of the Department for conduct which is heroic and meritorious. The form or amount of such reward shall be discretionary with the Board of Trustees, but it shall not exceed in any one instance one month's salary, and may be paid only out of funds provided by the Council; and the Council may, on application of the Board of Trustees, provide money for such purposes.

Section 1414. The Board of Trustees shall hold quarterly meetings in April, July, October and January of each year, and special meetings upon the call of its President; it shall issue warrants, signed by its President and Secretary, to persons entitled thereto for the amount of money ordered paid to such persons from the Police Relief and Pension Fund. Each warrant shall state for what purpose the payment is made.

Section 1415. The Board of Trustees shall keep a public record of its proceedings. It shall at each quarterly meeting send to the Treasurer and to the Auditor a written or printed list of all persons entitled to payments from the Police Relief and Pension Fund, stating the amount of such payment and for what granted; such lists shall be certified and signed by the President and Secretary of the Board. The Auditor shall thereupon enter a copy of such list upon a book to be kept for that purpose, which shall be known as the Police Relief and Pension Fund Book. All warrants signed by the President and Secretary of the Board shall be presented to the Auditor and ordered paid by him out of said fund.

Section 1416. The Board of Trustees shall possess the power to make rules and regulations for its guidance. No compensation shall be paid to any member of the Board of Trustees for any duty required or performed as a member of said Board of Trustees.

Section 1417. The Board of Trustees shall make an annual estimate necessary to carry into effect the foregoing provisions, and transmit the same to the City Manager, who shall cause the same to be included in his annual estimate of the probable expenditures of the City. (Amended by: Stats. 1931.)

Section 1418. In case of death of a matron or substitute matron the pension herein provided for shall be paid to her surviving husband only if in the opinion of the Board of Trustees he is unable to support himself by reason of physical or mental infirmity and has no other means of support. (Repealed by: Stats. 1919; Added by: Stats. 1941.)

Payment of Pension, Etc. As Credit On Compensation, Etc. Award

Section 1419. If any member of the Department, or the widow, child or children, parent or parents, of a deceased member of the Department, or if any matron or substitute matron, or the husband or child or children, or parent or parents, of a deceased matron or substitute matron shall receive any payment under the provisions of Division IV of the Labor Code, or any other act or acts of Legislature, or Constitution, of the State of California, providing for an award, compensation, death or disability payment because of the disability, sickness, injury or death arising out of the performance of duty of such member, matron or substitute matron, any payment on account thereof shall be applied as a credit and set-off against any payment on account of salary, pension or other benefit payable under this Article. (Added by: Stats. 1941.)

No Benefits Based On Award Of Industrial Accident Commission

Section 1420. No pension shall be paid under this Article on the basis of an award by the Industrial Accident Commission of the State of California. (Added by: Stats. 1951.)

Section 1421. There shall be employed in the Department of Public Health and Safety such number of matrons and substitute matrons of the City Prison as the Council shall from time to time prescribe by ordinance; providing, that such

number of matrons shall be not less than three and that such number of substitute matrons shall not be less than one. All appointments of matrons and substitute matrons shall be made by the City Manager from the eligible list of the Civil Service Board. The compensation of said matrons shall not be less than \$2,676.00 per annum each. Such compensation shall be paid in equal monthly installments. The compensation of said substitute matrons shall be at the rate of not less than \$2,676.00 per annum each, to be paid only for the time during which said substitute matrons shall actually perform the services of matrons. There shall be deducted from each monthly installment of salary due pursuant to the provisions of this Article, a sum equal to five per cent of such monthly installment, which sum so deducted shall be retained by the Treasurer of the City and forthwith paid by him into the Police Relief and Pension Fund. Such matrons and substitute matrons shall be entitled as if officers or members of the Police Department to all of the rights, privileges and benefits conferred by Sections 92*, 1423, 1400, 1401, 1402, 1405, and 1408-1418 inc. of the Charter upon officers or members of the Police Department. (Added by: Stats. 1919; Amended by: Stats. 1923, 1925, 1931, 1933, 1943, 1946.)

Policewomen

Section 1422. Notwithstanding any other provisions of this Charter to the contrary, the position of Matron and Substitute Matron provided for in this Charter shall be, from and after the approval of this amendment by the State Legislature, designated as Policewomen in the Police Department, and the Council shall have the power to fix the compensation thereof. All persons employed in the position of Matron and Substitute Matron upon said effective date of this amendment shall thereafter hold the rank of Policewoman without examination and without loss of any of their civil service and retirement rights. The provisions of this section are for the purpose of eliminating the positions heretofore designated as Matron and Substitute Matron, and creating said positions in the Police Department under the designation Policewomen with all rights thereunder. (Added by: Stats. 1953.)

Allowance For Injury

Section 1423. Any officer or member of the Police Department sustaining an injury while in the performance of his duty shall be entitled to receive in addition to the benefits otherwise provided in Article XIV of this Charter* such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches and apparatus, including artificial members, as may be required during the continuance of his disability, the same to be provided by the City; and the Council shall allow such officer or member so injured full pay during the continuance of his disability, or until such time as he may be retired on a pension. (Added by: Stats. 1917. Amended by: Stats. 1919.)

* This reference is to the Section or Article so designated in the former Charter.

ARTICLE XV FIREMEN'S RELIEF AND PENSION FUND

Section 1500. The fund heretofore created, known and designated as the Firemen's Relief and Pension Fund shall continue in effect. The Mayor, Health Officer, and the President of the Civil Service Board shall hereafter constitute the Board of Trustees of such fund, and the City Treasurer shall be the custodian of said fund. (Amended by: Stats. 1919, 1931.)

Section 1501. Any member of the Department who resigns or is discharged from the service previous to retirement, shall have all such sums as have been deducted from his pay and contributed to the Firemen's Relief and Pension Fund pursuant to the provisions of Section 97b*, refunded to him plus simple interest at the rate fixed by the Board of Trustees. (Added by: Stats. 1943.)

Section 1502. The said Board of Trustees may retire and relieve from service any aged, infirm, or disabled member of the Department who has arrived at the age of fifty-five years, and who, upon examination by two regularly licensed and practicing physicians, appointed by the Trustees for that purpose may be ascertained to be, by reason of such age, infirmity, or other disability, unfit for the performance of his duty said Board of Trustees shall, at the request of any member of the Department who has arrived at the age of fifty-five years, and who shall have served twenty years in the aggregate in this Department, retire, and relieve such member making such application. And the said Board of Trustees shall, upon the request of any member of the Fire Department who has served twenty-five years in the aggregate as a member of said Fire Department, retire and relieve said member making such application. Such retired member shall receive from the Firemen's Relief and Pension Fund a pension equal to one-half of the salary attached to the rank held by him one year prior to the date of said retirement, which pensions shall be paid in equal monthly installments and shall cease at the death of such member. (Amended by: Stats. 1919.)

Compulsory Retirement At Age Seventy

Section 1503. Notwithstanding any provision contained in this Article, retirement under Section 1502 shall be compulsory upon such member reaching the age of seventy years. (Added by: Stats. 1941.)

Absence By Reason Of War Or Other National Emergency

Section 1504. Absence of a member of the Fire Department by reason of service with the armed forces of the United States, either during a war involving the United States as a belligerent or in any other National emergency and for six months thereafter and who is not dishonorably discharged or released therefrom, shall be credited to such member as service for the City for retirement purposes. No contributions to the Firemen's Relief and Pension Fund for such period of absence without compensation from the City shall be required of such member.

* This reference is to the Section or Article so designated in the former Charter.

This section shall be retroactively applied to extend its benefits to such members of the Fire Department whose absence commenced prior to its effective date. (Added by: Stats. 1947.)

Pension For Member Disabled In Performance Of Duty

Section 1505. Any member of the Department who shall become physically disabled by reason of any bodily injury received in the performance of his duty upon his filing with the Board of Trustees a verified petition, setting forth the facts constituting such disability, and the cause thereof, accompanied by a certificate signed by the Chief of the Fire Department, the Chief of the Battalion to which he belongs and by two regularly licensed physicians of the City recommending his retirement upon a pension, on account of such disability, may be retired from the Department upon an annual pension, equal to one-half the amount of salary attached to the rank which he held one year prior to the date of such retirement, to be paid to him in equal monthly installments during the balance of his lifetime and to cease at his death. In case his disability shall cease, his pension shall cease, and he shall be restored to the service in rank he occupied at the time of his retirement; provided that the said Board of Trustees may of its own motion retire any member who shall become physically disabled by reason of any bodily injury received in the performance of his duty, who upon examination by two regularly licensed and practicing physicians appointed by the Trustees for that purpose, may be ascertained to be by reason of such disability unfit for the performance of his duty, provided further that such disability shall have continued for one year. (Amended by: Stats. 1919, 1941.)

Benefit To Dependents Of Deceased Member Retired For Disability Incurred In Performance Of Duty

Section 1506. Notwithstanding any other provision set forth in Section 1505, if a retired member of the Department shall die at any time by reason of the bodily injury for which he was pensioned, his pension shall not cease but shall continue and shall be paid to his widow to whom he was married at the time of such injury, or to his orphan child or children, or to his parent or parents, in the manner and subject to the provisions of Section 1507 (a), (b) and (c). (Added by: Stats. 1941.)

Pension To Dependents When Member Dies Of Injury Or Disability Incurred In Performance of Duty

Section 1507. The Board of Trustees shall, out of the Firemen's Relief and Pension Fund, provide for the family of a member of the Department who may die as a result of an injury or disability incurred while in the performance of his duty as follows:

- (a) Should the decedent be married, his widow, as long as she shall remain unmarried, shall be paid a pension equal to one-half of the salary attached to the rank held by the decedent at the time of death.
- (b) Should the decedent leave no widow, but leave an orphan child or children, under the age of eighteen years, or should the decedent leave a widow and child or children under the age of eighteen years, and the widow die without remarrying, while such child or children are yet under the age of eighteen years, such child, or children collectively, shall receive a pension equal to one-half of the salary attached to the

rank held by the decedent at the time of his death until the youngest child attains the age of eighteen years, provided that no child shall receive any such pension after attaining the age of eighteen years, nor shall any child receive any such pension should he or she marry before reaching the age of eighteen years.

- (c) Should the decedent leave no widow, or no orphan child or children but leave a parent or parents, dependent solely upon him for support, such parent or parents so depending shall collectively receive a pension equal to one-half the salary attached to the rank held by the decedent at the time of his death during such time as the Board of Trustees may determine its necessity. **(Amended by: Stats. 1919, 1941.)**

Section 1508.

- (a) Upon the death of a member of the Department who had been retired under this article, and such death shall occur after the effective date of this section and shall result from causes other than injuries received in or illness caused by or arising out of the performance of duty, two-thirds of such member's pension at the time of death shall be continued regardless of the age of the surviving widow, the dependents of the member in this order of succession and upon the conditions provided in Section 2612.
- (b) There shall be deducted from each monthly installment of pension due to such retired member under the provisions of this article a sum equal to 1-1/2% of such monthly installment which sum shall be retained by the Treasurer of the City and forthwith paid by him into the Police and Fire Retirement Fund.
- (c) The provisions of subdivisions (a) and (b) of this section shall not be applicable to any retired member of the Department who has not within 90 days after the ratification of this section by the State Legislature filed with the Secretary of the Police and Fire Retirement Board said member's written election to be subject to the provisions of said subdivisions. **(Added by: Stats. 1955.)**

Section 1509. The widow of a member of the Department who was retired for years of service under the provisions of Section 1502 and who died prior to the effective date of Section 1508 from causes other than injuries received in, or illness caused by, or arising out of, the performance of duty, provided such widow was married to the decedent at least one (1) year prior to his retirement and has remained unmarried since the date of his death, shall receive two-thirds of the decedent's pension. The widow of a member of the Department who died from causes other than injuries received in, or illness caused by, or arising out of, the performance of duty and whose death occurred prior to eligibility for membership in the retirement system created by Article XXVI, and who was not receiving a pension under this Article, but who was eligible for retirement for years of service under Section 1502, shall receive two-thirds of the pension which would have been provided for him by said Section 1502 if he had been retired for years of service at the time of death, provided she has remained unmarried since the date of his death. The pension(s) herein provided for shall commence on the first of the

month next following the effective date of this section and shall be paid in equal monthly installments as long as such respective widow(s) shall live and remain unmarried.

This section shall not be construed to provide any payment to such widow for any period of time prior to the first day of the month next following the effective date hereof, except that benefits under this section shall be in addition to any benefits heretofore received by the widow under Section 1510. (Added by: Stats. 1957.)

Section 1510. When a member of the Department shall die from causes other than those specified in Section 1507 after ten years of service, then his widow and if there be no widow, then his children, and if there be no widow or children, then his mother, if dependent upon him for support, shall be entitled to the sum of One Thousand (1,000) Dollars; provided, further, when a member of the Department shall die from causes other than those specified in Section 1507 before retirement or eligibility for retirement, regardless of length of service, then his widow, and if there be no widow, then his children, and if there be no widow or children, then his parents or parent, and if there be none of these, then his estate, shall have and receive a refund of all such sums as have been deducted from his pay and contributed to the Firemen's Relief and Pension Fund, plus simple interest at a rate fixed by the Board of Trustees. When a member of the Department dies at such time as to qualify under both provisions of this Section, the person or representatives entitled to receive the payment or refund herein provided shall elect whether the One Thousand (1,000) Dollar payment or the refund of salary deductions shall be received, but in no event shall both be paid on account of the same death. (Amended by: Stats. 1943.)

Section 1511. Any person receiving a pension from the Firemen's Relief and Pension Fund, who shall become convicted of a felony, or after notice and an opportunity to be heard shall be found by the Board of Trustees to have become dissipated or an habitual drunkard, or shall become a non-resident of this State except on leave by the Board of Trustees, shall forfeit all right to said pension. (Amended by: Stats. 1941.)

Section 1512. The Board of Trustees may, on notice from the Chief of the Fire Department, reward any member of the Department for conduct which is heroic and meritorious. The form or amount of such reward shall be discretionary with the Board of Trustees, but it shall not exceed in any one instance one month's salary, and may be paid only out of funds provided by the Council; and the Council may, on application of the Board of Trustees, provide money for such purposes.

Section 1513. The Board of Trustees shall hold quarterly meetings in April, July, October and January of each year and special meetings upon the call of its President, it shall issue warrants, signed by its President and Secretary, to persons entitled thereto for the amount of money ordered paid to such persons from the Firemen's Relief and Pension Fund. Each warrant shall state for what purpose the payment is made.

Section 1514. The Board of Trustees shall keep a public record of its proceedings. It shall at each quarterly meeting send to the Treasurer and to the Auditor a written or printed list of all persons entitled to payments from the

Firemen's Relief and Pension Fund, stating the amount of such payment and for what granted; such lists shall be certified and signed by the President and Secretary of the Board. The Auditor shall thereupon enter a copy of such list upon a book to be kept for that purpose which shall be known as the Firemen's Relief and Pension Fund Book. All warrants signed by the President and Secretary of the Board shall be presented to the Auditor and ordered paid by him out of said fund.

Section 1515. The Board of Trustees shall possess the power to make rules and regulations for its guidance. No compensation shall be paid to any member of the Board of Trustees for any duty required or performed as a member of said Board of Trustees.

Section 1516. The Board of Trustees shall make an annual estimate necessary to carry into effect the foregoing provisions and transmit the same to the City Manager who shall cause the same to be included in his annual estimate of the probable expenditures of the City, and the Council shall, on application of the said Board of Trustees, provide the necessary money for the demands of this pension fund. (Amended by: Stats. 1919, 1931.)

Payment Of Pension, Etc., As Credit On Compensation, Etc., Award

Section 1517. If any member of the Department, or the widow, child or children, parent or parents, of a deceased member of the Department, shall receive any payment under the provisions of Division IV of the Labor Code, or any other act or acts of the Legislature, or Constitution, of the State of California, providing for an award, compensation, death or disability payment, because of the disability, sickness, injury, or death arising out of the performance of duty of such member, any payment on account thereof shall be applied as a credit and set-off against any payment on account of salary, pension or other benefit payable under this Article. (Added by: Stats. 1941.)

No Benefits Based On Awards Of Industrial Accident Commission

Section 1518. No pension shall be paid under this Article on the basis of an award by the Industrial Accident Commission of the State of California. (Added by: Stats. 1951.)

Allowance For Injury

Section 1519. Any member of the Fire Department sustaining an injury while in the performance of his duty shall be entitled to receive, in addition to the sick leave provided for, such medical, surgical and hospital treatment including nursing, medicines, medical and surgical supplies, crutches and apparatus, including artificial members, as may be required during the continuance of his disability, the same to be provided for by the City; and the Council shall allow the member so injured full pay during the continuance of his disability or until such time as he may be retired on a pension. (Added by: Stats. 1917; Amended by: Stats. 1919.)

ARTICLE XX
OAKLAND MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM

Retirement Of Aged And Disabled City Employees

Section 2000. The City Council, by ordinance, for a four-fifths vote, and under the conditions set forth herein, shall establish a retirement system and provide death benefits for persons employed by the City of Oakland who are not eligible for membership in any other City pension system; provided, that the system herein provided for shall not apply to elective officers or to members of boards or commissions appointed by the Mayor, by a Commissioner, or by the City Council.

The Council, subject to the provisions of Section 2013 of this Charter, may also by similar vote amend the system so adopted.

The words "employees" or "persons employed," wherever used in this section, shall include persons generally classed as "officers" or "officials." (Amended by: Stats. 1927.)

Board Of Administration Of Retirement Fund Definitions

Section 2001. The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, shall have the following meaning:

"Retirement allowance," or "allowance," shall mean equal monthly payments, beginning to accrue upon the date of retirement, and continuing for life unless a different term of payment is definitely provided by the context.

"Compensation," as distinguished from benefits under the Labor Code of the State of California, shall mean all remuneration, whether in cash or by other allowances made by the City for service qualifying for credit under the Retirement System; provided that when the compensation of a member is a factor in any computation to be made under this System, there shall be excluded from such computation any compensation based on overtime put in by a member. For the purpose of this system, overtime is the aggregate service performed by an employee as a member in all positions, in excess of the hours of work considered normal for employees on a full-time basis and for which monetary compensation is paid.

"Compensation earnable" shall mean the monthly compensation as determined by the Board of Administration which would have been earned by the member had he worked, throughout the period under consideration, the average time ordinarily worked by persons in the same grade or class of positions as the positions held by him during such period and at the rate of pay attached to such positions. The computation for any absence of a member shall be based on the compensation earnable by him at the beginning of the absence, and that for time prior to entering the employ of the City, shall be based on the compensation earnable by him in the position first held by him in such employ.

"Benefit" shall include "allowance," "retirement allowance," and "death benefit."

"Accumulated normal contributions" shall mean the sum of all contributions plus interest.

"Accumulated additional contributions" shall mean the sum of all additional contributions plus interest.

"Accumulated contributions" shall mean accumulated normal contributions plus accumulated additional contributions.

"Final compensation" means the highest average compensation earnable by a member during any period of three consecutive years of service; compensation earnable to be computed as described in the definition of "compensation earnable." For the purpose of this paragraph, periods of service separated by breaks in service may be aggregated to constitute a period of three consecutive years, if the periods of service are consecutive except for such breaks. If a break in service did not exceed six months in duration, time included in the break and compensation earnable during such time shall be included in the computation of final compensation. If a break in service exceeded six months in duration, the first six months thereof and the compensation earnable during those six months shall be included in the computation of final compensation, but time included in the break which is in excess of six months and the compensation earnable during such excess time shall be excluded in the computation of final compensation.

"Member" means any officer or employee who is included in the membership of this Retirement System.

"Retirement System" or "System" shall mean Oakland Municipal Employees' Retirement System as heretofore created under authority granted in this Section, said Retirement System being hereby continued in effect.

"Board" or "Retirement Board" shall mean board of administration as created in this Section.

Words used in the masculine gender shall include the feminine and neuter genders, and singular numbers shall include the plural and the plural the singular.

"Interest" shall mean interest at the rate adopted by the Retirement Board.

"Service" shall mean any service rendered prior to July 1, 1939, as an employee of the City of Oakland which for the purpose of this System is designated as "prior service"; and any service rendered after June 30, 1939, in a status requisite for membership in the Retirement System, but only prior service and service rendered as a member of the Retirement System shall be credited under the System.

This Section shall become effective on the first day of the month next following approval by the Legislature and filing with the Secretary of State. (Amended by: Stats. 1971.)

Board Of Administration Of Retirement Fund

Section 2002. A Board of Administration of said retirement system is hereby created consisting of the City Treasurer, the Auditor, three (3) members elected from the active, retired and deferred membership of the retirement system, a resident representative of a life insurance company, and an officer of a local bank.

The Council shall, upon the recommendation by the Mayor, appoint the resident representative of a life insurance company and the officer of a local bank hereinbefore referred to. Persons holding membership on said Board upon the adoption of this amendment shall continue to serve the terms to which they were elected or appointed.

The City Treasurer and Auditor shall be members of the Board ex-officio.

All members shall serve without compensation. (Amended by: Stats. 1927, 1931, 1974.)

Who May Be Retired - Retirement Benefits

Section 2003. Any member who completes at least twenty years of service in the aggregate with which he is entitled to be credited under the System, and attains the age of fifty-two years, or completes at least 10 years of such service and attains the age of sixty years, may retire for service at his option. Members shall be retired for service on the first day of the month next following the attainment by them of the age of seventy years, regardless of length of service. Upon retirement for service after the effective date hereof, a member shall receive a service retirement allowance equal to the fraction of one-sixtieth of his final compensation, set forth opposite his age at retirement, taken and applied by interpolation of said fractions to the preceding completed quarter year of age, in the following table in the column applicable to his sex, multiplied by the number of years of service with which he is entitled to be credited:

Age at Retirement	Fraction Men	Fraction Women
52	.6120636	.6352571
53	.6477249	.6692856
54	.6862515	.7059143
55	.7279876	.7454909
56	.7732616	.7882855
57	.8225384	.8346370
58	.8764127	.8850589
59	.9354005	.9399551
60	1.0000000	1.0000000
61	1.0564648	1.0569430
62	1.1156446	1.1169496
63	1.1782066	1.1807488
64	1.2444586	1.2487750
65 & over	1.3147929	1.3216755

The fractions herein set forth at ages other than age 60 are based on the interest rate and mortality tables used under the Retirement System on the effective date hereof and shall be adjusted by the Board in accordance with such interest and mortality tables as the Board may adopt thereafter. The Board shall declare from time to time the rate of interest at which interest shall be credited on contributions of members and the City, and the rate of interest which shall be used in determining actuarial equivalents, which rate shall not exceed a rate one-fourth of a percentage point below the net rate currently earned on the assets of the Retirement Fund.

The Retirement System also shall provide for death benefits for members of the System. The City Council also shall provide that a member retiring may elect, before the first payment of the retirement allowance is made, to receive the

actuarial equivalent of his allowance in a lesser allowance to be received by him throughout his life and in other benefits payable after his death to another person, including an allowance throughout the life of such person.

For the purpose of this Section, the qualifying ten-year periods of service shall be accumulated during any continuous periods of not more than twelve years, provided any absence from or return to actual service during such twelve-year periods is approved by the Civil Service Board in the case of persons in the classified civil service or by the City Council in the case of other persons within the Retirement System.

This section shall become effective on the first day of the month next following approval by the Legislature and filing with the Secretary of State. (Amended by: Stats. 1971.)

Section 2004. Notwithstanding the provisions of Section 2003 to the contrary, the provisions of this Section shall apply to the Retirement System. The City Council also shall provide that a member retiring may elect before the first payment of his retirement allowance is made, and that a member may elect at any time before retirement, but only after qualification for service retirement, as provided in Section 2010 to receive the actuarial equivalent of the portion or all of his allowance, as the case may be, which would not be continued automatically regardless of dependents then living, in a lesser allowance to be received by him throughout his life and in other benefits payable after his death to another person, including an allowance throughout the life of such person. The amounts payable under options two (2) or three (3) as stated in Ordinance No. 713 C.M.S., which were elected prior to the effective date of Section 2007 by a person who is living on that date, shall be adjusted to amounts calculated as if the provisions of that Section had been in effect at the date of his retirement, but no adjustment shall be made because of payments made prior to such effective date.

This Section shall become effective on the first day of the month next following approval by the Legislature and filing with the Secretary of State. (Amended by: Stats. 1971.)

Section 2004.5 The Retirement System also shall provide for retirement for disability after five years of service credited under the System, and before age 60, subject to the following conditions:

It is the intention of this section that allowances granted to or on account of members of the System for injury, illness or death incurred in the performance of duty shall not be cumulative with benefits under the Labor Code of California awarded as the result of the same injury, illness or death. If any member of the System or dependent receives compensation under the Labor Code for disability or death arising out of and in the course of the performance of duty, any payment on account thereof shall be applied as a credit and set-off against any payment on account of salary granted to such member under Section 8.04 of the Laws and Rules of the Civil Service Board; or retirement allowances or other benefit granted to or on account of such member under the provisions of this article as follows:

- (a) If the amount is paid in one sum or in installments equal to or greater than such salary, retirement allowance, or other benefit, such member or dependent shall not receive any salary, retirement allowance or

other benefit until the total amount of the salary, retirement allowance, or other benefit which would otherwise be payable equals the total amount received under the Labor Code.

- (b) If the amount is paid in installments less than such salary, retirement allowance or other benefit, the salary, retirement allowance or other benefit shall be reduced so that the total of salary, retirement allowance or other benefit plus the amounts received under the Labor Code will equal the salary, retirement allowance, or other benefit which would otherwise be due.
- (c) In either case, any award specifically granted for medical, surgical or hospital expenses shall not reduce the salary, retirement allowance or other benefit.

No disability retirement benefits shall be paid under this section on the basis of an award by the Workmen's Compensation Appeals Board of the State of California.

This section shall become effective on the first day of the month next following approval by the Legislature and filing with the Secretary of State. (Added by: Stats. 1971.)

Member's And City's Contributions

Section 2005. Contributions to the Retirement System, required of members and the City, shall be as follows:

- (a) The normal rate of contribution of each member as determined by the actuary and approved by the Board and to be effective on the effective date hereof shall be based on his nearest age at the effective date of his membership in the Retirement System, and if effective from the effective date of his membership, shall be such as, on the average for such member, will provide, assuming service without interruption from said effective date until retirement, one-half of the portion of the service retirement allowance which is based on such service, and to which he would be entitled if retired at age 60, but not including automatic continuance to dependents. The actual amount of annuity including such continuance, however, provided for a member upon retirement, shall be the actuarial equivalent of his accumulated contributions. The normal rate established for age 59 shall be the rate for any member who has attained a greater age before entrance into the System, and that established for age twenty shall be the rate for any member who enters the System at a lesser age. Members' normal rates of contributions shall be changed by the Board on the basis of periodical actuarial valuation and investigation provided by the Charter. No adjustment shall be included in members' normal rates because of time during which they have contributed at different rates.

This amendment shall become effective on July 1, 1959, or the first day of the month next following approval by the Legislature, whichever is later. (Amended by: Stats. 1959.)

- (b) There shall be deducted from each payment of compensation made to a member, a sum determined by applying the members normal rate of contribution to such compensation. The sum so deducted shall be

paid forthwith to the Retirement System, and shall be credited to the individual account of the member from whose compensation it was deducted, and the total of said contributions, together with interest credited thereon, shall be applied to provide part of the retirement allowance granted to said members; or said total of said contributions, together with interest credited thereon shall be paid to said member upon termination of his employment by the City prior to retirement, or to his estate or beneficiary upon his death, in the manner provided by the City Council. The City Council, however, shall provide for election by members who are entitled to be credited with at least 5 years of service and whose employment is terminated by cause other than death or retirement, to allow their accumulated contributions to remain in the Retirement fund, to continue as members of the System and to be subject to the same age and disability requirements as apply to other members for service or disability retirement, but they shall not be subject to a minimum service requirement, and the minimum retirement allowances shall not apply to them, unless they meet such minimum service requirement. Subject to rules prescribed by the Board, any member may elect to make contributions in excess of his contributions herein required, for the purpose of providing additional benefits, and benefits provided hereunder for such member shall be exclusive of such additional benefits. The exercise of this privilege by a member shall not require the City to make any contributions. Additional contributions shall be administered in the same manner as normal contributions.

This section shall become effective on the first day of the month next following approval by the Legislature and filing with the Secretary of State. (Amended by: Stats. 1971.)

- (c) Contributions deducted prior to the effective date hereof, from compensation of members of the System, and standing with interest thereon, to the credit of such members on the records of the Retirement System on said date, shall continue to be credited to the individual accounts of said members and shall be combined with and administered in all respects in the same manner as the contributions deducted after said date.
- (d) The total contributions, with interest thereon, made by or charged against the City and standing to its credit, on the effective date hereof, in the accounts of the Retirement System, shall be applied to provide part of the benefits under this System.
- (e) The City shall contribute to the Retirement System such amounts as may be necessary, when added to the contributions referred to in the preceding paragraphs of this Article, to provide the benefits payable under the System. Such contributions of the City to provide the portion of the benefits hereunder which shall be based on service rendered prior to July 1, 1939, shall not be less during any fiscal year than the amount of such benefits paid during said year. Such contributions of the City to provide the portion of the benefits

hereunder which shall be based on service rendered by respective members on and after July 1, 1939, shall be made in annual installments, and the installment to be paid in any year shall be determined by the application of a percentage to the total compensation paid to members during said year. Said percentage shall be the ratio of the value at the date of the periodical actuarial valuation and investigation into the experience under the System as provided by the Charter, of the benefits thereafter to be paid from contributions of the City, less the amount of such contributions, and plus accumulated interest thereon, then held by said System to provide said benefits on account of Service rendered by respective members on and after July 1, 1939, to the value at said date of compensation thereafter payable to said members. Said values shall be determined by the actuary, who shall take into account the interest which shall be earned on said contributions, the compensation experience of members, and the probabilities of separation by all causes, of members from service before retirement and of death after retirement. Said percentage shall be changed by the Board on the basis of said values determined in said periodical actuarial valuation and investigation into the experience under the System. The initial percentage to be used under this Section shall be six and eighty-four hundredths per cent (6.84%) until redetermined by the Board of Administration on the basis of the periodical investigation and actuarial valuation under the System.

This section shall become effective on July 1, 1953, or the 1st day of the month next following approval by the Legislature, whichever is later. (Amended by: Stats. 1927, 1953)

Absence By Reason of War or Other National Emergency

Section 2006. Absence of a member of the Retirement System by reason of service with the armed forces of the United States, either during a war involving the United States as a belligerent or in any other National emergency and for six months thereafter and who is not dishonorably discharged or released therefrom, shall be credited to such member as service for the City for retirement purposes.

While so absent without compensation from the City, the City shall contribute, for and on behalf of each member absent by reason of such service, amounts equal to the contributions which would have been made by such member and the City to the Retirement System if he had not been so absent. Any such member who contributed to the Retirement System under the provisions of Section 33 (4-1/2)* of this Charter entitled "Contributions by Members in Military Service" before its repeal, shall have such contributions refunded or, at his election credited to his account as additional contributions, but such additional contributions when credited to his account shall not place on the City any additional financial obligation.

* This reference is to the Section or Article so designated in the former Charter.

The contributions made by the City pursuant to the provisions of this Section shall be made available only for the purpose of retirement, and if employment by the City of any such member be discontinued before retirement, he shall be entitled to withdraw only that portion of his accumulated contributions actually made by him, or should he die before retirement, any death benefit payable by reason of his death shall include only that portion of his accumulated contributions actually made by him.

This Section shall be retroactively applied to extend its benefits to such members of the Retirement System whose absence commenced prior to its effective date. (Added by: Stats. 1947.)

Continuation of Retirement Allowances After Death

Section 2007. Upon the death of a person after his retirement, including persons receiving allowances on the effective date of this Section, one-half of his retirement allowance as it was at death, before modification under an option shall be continued throughout life or until the remarriage of the surviving spouse if the remarriage occurs prior to January 1, 1985. If there be no surviving spouse entitled to an allowance hereunder, or if the surviving spouse so entitled dies before every child of such deceased member attains the age of eighteen years, then the allowance which the surviving spouse would have received, or which the surviving spouse would have received had she lived shall be paid to a child or children under said age, collectively, to continue until every such child dies or attains said age, provided that no child shall receive any allowance after marrying or attaining the age of eighteen years. Should said member leave no surviving spouse and no children under the age of eighteen years, but leave a parent or parents dependent upon him for support, the parents so dependent shall collectively receive a monthly allowance equal to that which a surviving spouse otherwise would have received, during such dependency. No allowance, however, shall be paid under this section to a surviving spouse, unless he or she was married to the member at least one year prior to retirement. Contributions necessary for the payment of the continuance of one-half of allowances of persons who are receiving allowances on the effective date of this Section, shall be provided from the reserves held by the Retirement System on account of active members, the necessary amount being transferred upon said effective date from said reserves to the reserves held by the Retirement System to meet obligations on account of benefits that have been granted.

This Section shall become effective on the first day of the month next following approval by the Legislature. (Added by: Stats. 1959. Amended by: Stats. June 3, 1986.)

Allowance Upon Death After Qualification For But Before Service Retirement

Section 2008. Upon the death before retirement of a member who is qualified for service retirement under Section 2003 by attainment of the age of at least fifty-two (52) years with credit for twenty (20) or more years of service, or at least sixty (60) years with credit for ten (10) or more years of service, and on account of whose death the benefit provided for in accordance with such Section,

is otherwise payable, a monthly allowance equal to one-half of the monthly retirement allowance prior to modification under options provided for in accordance with such Section which the member would have been entitled to receive if he had retired from service on the date of his death, shall be payable:

- (a) To the member's widow, or to the member's widower who was receiving at least one-half of her/his support from the member at the time of the member's death, and with respect to both widow and widower, who was married to such member prior to the occurrence of the injury or onset of the illness which resulted in death; or
- (b) If there is no qualifying spouse, or if such spouse dies or remarries, to unmarried children, including stepchildren, of the member, who are under 18 years of age.

The allowance payable under this Section shall be in lieu of the death benefit provided for in accordance with Section 2003 except for the accumulated additional contributions included herein, but a person qualifying for the allowance or such person's guardian may elect, before the first payment on account of it, to receive such death benefit in lieu of the allowance. The member's accumulated additional contributions shall be paid to the person qualifying for the allowance, and the remainder of the accumulated contributions of the member shall be applied toward providing the allowance, and the balance not so provided shall be payable from contributions of the City.

The allowance shall begin to accrue on the day next following the date of death of the member, and payments to the surviving spouse shall continue only until death or remarriage if remarriage occurs prior to January 1, 1985, and to or on account of children with respect to each child, until the attainment of age 18, death or prior marriage. If payment of the allowance provided by this Section is stopped because of remarriage of the surviving spouse prior to January 1, 1985, or the attainment of the age of 18 years by, or the death or marriage of, a child, before the sum of the monthly payments made equals the death benefit provided for in accordance with Section 2003, exclusive of accumulated additional contributions, a lump sum equal to the difference shall be paid to the remarried spouse who remarried prior to January 1, 1985, or if there is no such spouse, to the surviving children of the member, share and share alike.

This Section shall become effective on the first day of the month next following approval of the Legislature. (Added by: Stats. 1959. Amended by: Stats. June 3, 1986.)

Withdrawals

Section 2009. Should any member discontinue to be an employee of the City, except by death or retirement, he shall be paid, under such rules as may be established by ordinance of the Council, all of his accumulated contributions, together with interest thereon at rates to be set by the Council upon the recommendation of the Board of Administration.

The Council may also, by ordinance, define the rights of former employees or of former members of the retirement system upon their re-entry into the City service. (Amended by: Stats. 1927.)

Irrevocable Option Election After Qualification For But Before Service Retirement

Section 2010. Any member who has qualified for service retirement under Section 2003 by attainment of the age of at least fifty-two (52) years, with credit for twenty (20) or more years of City service, or at least sixty (60) years, with credit for ten (10) or more years of City service, may elect as provided in Section 2004 and without right or revocation or change after approval of the election by the Retirement Board, to receive the actuarial equivalent as of the date of his retirement of the retirement allowance payable to him when and if he retires for service or disability, in a reduced retirement allowance according to the provisions of either Option 2 or Option 3, as stated in Ordinance No. 713 C.M.S. If such a member at the time of making the election has a living spouse who would qualify for an allowance under Section 2008, the election under this Section shall be invalid and of no effect unless and until the consent of such spouse to it is filed at the office of the Retirement System.

Upon such member's death at least thirty (30) days after the date upon which the election is received in the office of the Retirement System, and prior to the effective date of his retirement, the person who was nominated by him under the option he elected and who survives him, shall receive an allowance calculated under such option, upon the assumption that such member retired for service on the date of his death and died immediately thereafter. The payment of such allowance to such person shall be in lieu of both the death benefit provided for in accordance with Section 2004, and the allowance provided by Section 2008, and no such death benefit or such allowance shall be paid on account of such death to any person or beneficiary, regardless of whether the person nominated under the option elected survives the member.

If such member subsequently retires for service or disability, he shall receive, regardless of whether the person nominated by him under the option elected is then living, a reduced allowance according to the provisions of Section 2003 and the option elected. The amount of the allowance prior to optional modification shall be calculated on the basis of the member's age at death before retirement, or at retirement as the case may be, but the reduction of such allowance under the option elected shall be based on the ages of such member and the person nominated by him under such option at the effective date of such election.

This Section shall become effective on July 1, 1959, or the first day of the month next following approval by the Legislature, whichever is later. (Added by: Stats 1959.)

Allowances - Oakland Municipal Employee's Retirement System

Section 2011. Every retirement allowance payable by the Oakland Municipal Employees' Retirement System, for time commencing on the effective date of this section, hereby designated as the first day of July, 1953, or the first day of the month next following its approval by the Legislature, whichever is later, to or on account of any person who was retired prior to February 1, 1950, as a member of said system, is hereby increased by the amount of \$25.00 per month, provided such member was entitled to be credited under the Retirement System with at least twenty years of service upon which the retirement allowance was

determined at retirement. If the member was entitled to be credited with less than twenty years of such service, said monthly increase shall be an amount which shall bear the same ratio to \$25.00 that the service with which the member was entitled to be credited at the effective date of retirement bears to twenty years. This section does not give any member retired prior to the effective date hereof, or his successors in interest, any claim against the City for any increase in any retirement allowance paid or payable for time prior to said effective date. If a member elected at retirement to have his retirement allowance modified under Options 2 or 3, provided by Ordinance 713 C.M.S. and if his beneficiary is living on said effective date, the increase in his allowance shall be modified under the option elected at retirement, and on the basis of current ages, mortality tables and interest rate. If the beneficiary of such a person who elected at retirement to have his allowance modified under one of said options is not living on said effective date and the beneficiary is receiving the modified retirement allowance, then the allowance shall be increased as provided herein for persons who did not elect an option.

The increase in the retirement allowance shall be apportioned between service rendered prior to the entry of the member into the Retirement System and service rendered as a member, in the same proportion that such prior and current service, respectively, bears to the total service credited at retirement. Contributions to the Retirement System necessary for the payment of the portion of the increases in the retirement allowances provided in this Section, which are based on service as members, shall be provided from reserves held by the Retirement System to meet the obligations on account of benefits that have been granted and on account of prior service of members. If, however, the City's contributions on account of service rendered as members has been changed from an amount equal to members' contributions to an amount derived by applying a percentage to earned compensation of members, contributions to the Retirement System necessary for the payment of the increases in the retirement allowances provided in this section, shall be provided, with respect to the portion of the increase based on service rendered as members, from the reserves held by the Retirement System on account of miscellaneous members, the necessary amount being transferred upon said effective date, from said reserves to the reserves held by the Retirement System to meet the obligations on account of benefits that have been granted and on account of prior service of members. The contribution then being required of the city, as a percentage of salaries of persons who are members of the system, shall be increased by such increase in the percentage as is determined by the actuary as necessary to replace the reserves to be transferred. Contributions to the Retirement System necessary for the payment of the portion of said increases based on service rendered prior to membership in the Retirement System, shall be paid to the System by the City in annual appropriations, provided that such appropriation for any year shall not be less than the amount disbursed during that year on account of said portion of the increases. (Added by: Stats. 1953.)

Plan To Be Compulsory

Section 2012. The system shall be applied to employees, officers, or officials, not excluded by the provisions of this Amendment, of all such

departments, sections, or classes as the Council shall determine, and all persons in the employ of the City in such departments, sections, or classes after the system is adopted shall be members of the system; provided, that persons employed in the Office of the City Engineer prior to July 1, 1911, shall be classified as city employees during the period of such employment, for the purposes of membership in the Retirement System.

The Council may, however, provide that employees, officers, or officials of the aforementioned departments, sections, or classes who shall enter the service of the City after the system is adopted shall serve a period of six (6) months before becoming members of the system. (Amended by: Stats. 1927.)

Contributions To Be Based On Actuarial Tables

Section 2013. It shall be the duty of the first Board of Administration created under this Section to recommend a retirement system to the Council and to secure from a competent actuary a report of the cost of establishing the same.

The mortality, service, experience, or other tables calculated by the said actuary and the valuations determined by him and approved by the Board shall be conclusive and final. Any system adopted by the Council shall be based thereon, and no changes shall be made in the system by the Council until the cost of such changes has been estimated by a competent actuary and the changes themselves have been approved by the Board of Administration.

The Board of Administration shall cause the tables on which the system is based to be reviewed at least every three (3) years by a competent Actuary and shall recommend to the Council any changes in the system that the Board may deem necessary as the result of such actuarial review. (Amended by: Stats. 1927, September 1974.)

Liability For Prior Service

Section 2014. The system adopted hereunder shall include provision for an annual contribution by the City at least sufficient to meet the liability falling due in the current year for benefits to which members of the system are entitled by virtue of service rendered prior to the time the system becomes effective.

Said annual contribution for prior service shall be in addition to the contributions for current service required by Section 2005. (Amended by: Stats. 1927.)

Administration Of The Plan

Section 2015. The Board of Administration shall elect one of their number President and shall appoint a Secretary. They may also employ such additional actuarial, clerical, or other assistance as the Council may provide. All regular and permanent employees of the Board, with the exception of the actuaries, shall be appointed under the provisions of Article XIII of this Charter.

The Board shall make all necessary rules and regulations, not inconsistent with this Charter and the ordinances establishing the Retirement System, and it shall be the sole judge, under such general ordinances as may be adopted by the Council, as to the conditions under which persons may be admitted to benefits of any sort under the system.

The Board shall also have exclusive control of the administration and investment of such funds as may be established under the system; provided, that the Auditor shall refuse to allow any warrant drawn for the payment of a benefit

if in his opinion such benefit has been granted in contravention of this Section or of any ordinance passed under the authority granted herein; and provided further, that the City Treasurer shall be custodian of the funds under the direction of the Board of Administration as aforesaid. (Amended by: Stats. 1927.)

Additional Ordinances Authorized

Section 2016. The Council shall enact any and all ordinances necessary, in addition to the ordinance authorized in Section 2000, and they shall annually appropriate to the Board of Administration such amount as may be necessary for the proper operation of the aforementioned Retirement System.

The Board of Administration shall have exclusive management and disbursement of the funds so appropriated. (Added by: Stats. 1927.)

**ARTICLE XXI
MISCELLANEOUS**

Section 2100. (Repealed by: Stats. June 1976)

Municipal Court Employees - Civil Service and Retirement

Section 2101. The Council may by ordinance provide for the retention in the Retirement System and the Classified Civil Service of the City of Oakland of any employee, who upon the establishment of such court, are members of such Retirement System or Classified Civil Service, and shall, pursuant to the Municipal Court Act, become employees of the County of Alameda in the performance of duties relating to the court or the accounting for and auditing of fines, forfeitures and other revenues which become the property of the City under the law. Or, at its option, the City may reimburse the County for the costs of taking such employees into the retirement system applicable to county employees without loss to such members of their retirement compensation, death and other benefits.

Section 2102. (Repealed by: Stats. June 1976.)

**ARTICLE XXVI
Added By: Stats. 1951
POLICE AND FIRE RETIREMENT SYSTEM**

Section 2600. There is hereby added to the Charter of the City of Oakland a new Article to be known as Article XXVI for the purpose of combining into one system, hereby created and to be known as THE POLICE AND FIRE RETIREMENT SYSTEM, and the separate system heretofore created by the provisions of Article XIV and XV of this Charter. All persons who become members of the Police or Fire Departments as defined in Article XIV* and XV* of this Charter, including all persons hereafter employed to perform the duties now performed by matrons and substitute matrons of the City Prison, on or after the effective date of this Article, hereby defined as July 1, 1951, or the first of the month next following approval by the Legislature, whichever is the later, shall be

* This reference is to the Section or Article so designated in the former Charter.

members of the Retirement System established by this Article and shall be subject to the provisions hereof. All members of the Police or Fire Departments who are subject to the Relief and Pension Systems under the provisions of Article XIV and XV of this Charter, and not permanently retired, including matrons and substitute matrons of the City Prison, shall have the option of being members of this Retirement System under the provisions of this Article, said option to be exercised in writing on a form furnished by the Retirement Board as hereinafter defined, to be filed with the Secretary of the Board not later than 90 days after the effective date of this Article. Upon filing said written option, such persons shall be subject to the provisions of this Article as of its effective date, notwithstanding any other provisions of this Charter; provided that any of such persons who are absent by reason of service in the armed forces of the United States, and any persons on disability retirement under Article XIV or XV on the effective date of this Article, shall have the right to exercise said option within 90 days after return of such persons to service in said departments. Members of the Relief and Pension Systems under Articles XIV and XV of this Charter, who do not exercise the option in this section, shall remain members under the provisions of said articles and under the provisions of Section 2619 and benefits being paid, on the effective date hereof, to or on account of persons who are or have been members under said articles, shall be continued at their existing rates and in accordance with the provisions of said articles, but shall be paid from the fund created under this article.

Police and Fire Retirement Board

Section 2601. In order to continue in force and make effectual pensions and retirements already existing or that may be granted in the future in favor of members of the Police or Fire Departments, the systems heretofore existing under the provisions of Articles XIV and XV of this Charter are hereby combined into one system to be known as the Police and Fire Retirement System and the funds heretofore created, existing and known as the Police Relief and Pension Fund and the Firemen's Relief and Pension Fund, are hereby combined in a common fund to be known and designated as the Police and Fire Retirement Fund. This System and Fund shall be managed and administered by a Board hereby created to be known and designated as the Police and Fire Retirement Board, which shall be the successor of and shall have the powers and duties heretofore possessed and exercised by the Board of Trustees of the Police Relief and Pension Fund and the Board of Trustees of the Firemen's Relief and Pension Fund. This Retirement Board shall consist of seven (7) members as follows: the Mayor of the City, one active member of the Police Department, one active member of the Fire Department, a life insurance executive of a local office, a senior officer of a local bank, a community representative, and a Police-Fire retired member who shall be elected from the retired members of the Fire Department for a first three (3) year term commencing the first day of the month next following his election, and from the retired members of the Police Department for the next successive three (3) year term, and thereafter alternately from the retirement rolls of each of said departments for successive three (3) year terms. The election of the first such Police-Fire retired member by the vote of the retired members of the Fire Department shall be held within ninety (90) days following the effective date of

this amendment in the manner heretofore established by and under the supervision of the Retirement Board. In the event an active or retired Police-Fire member does not serve out his three (3) year term, his successor shall be elected from the department which has most recently elected him for the remainder of said unexpired three (3) year term. All members elected from the Police and Fire Departments or from the police-fire retirement rolls shall be elected by vote of the active or retired members of the respective departments as the case may be, and the Retirement Board may from time to time revise the manner of conducting such elections. The representative of a life insurance company, the representative of a bank, and the community representative shall be appointed by the City Council upon the recommendation of the Mayor. The Mayor, with the approval of the City Council, may designate a City officer or official to serve in his place and stead as a member of the Retirement Board for the term of his office. The terms of the incumbent board members who are serving terms immediately prior to the effective date of this amendment shall not be affected by this amendment, and those members shall be entitled to serve the balances of their respective terms on the Retirement Board; the terms of office of the future elected member of the Fire Department, of the future elected member of the Police Department and of the future insurance and bank representatives shall be five (5) years and shall follow successively the end of the term of the respective incumbent member of the Fire Department, member of the Police Department, and insurance and bank representative members; the first term of office of the community representative shall be two (2) years commencing the first day of the month next following the effective date of this amendment, and thereafter such member shall be appointed for successive five (5) year terms. The Mayor or his designated alternate shall serve the term of the Mayor. In the event of a vacancy, a successor shall be elected or appointed as the case may be for the unexpired portion of the term vacated. Election or appointment of successors as hereinabove provided shall be held or made not more than ninety (90) days prior to the expiration of the term of office of the member to be succeeded, or in the event of a vacancy in an office prior to the termination thereof not more than ninety (90) days immediately following the occurrence of such vacancy. The members of the Board shall serve without compensation.

- (a) The City Attorney shall attend all meetings of the Board in person or by authorized representative.
- (b) The Board shall hold regular meetings monthly and special meetings at any time upon the call of its President. A majority of the members of the Board shall constitute a quorum for the transaction of business. The powers conferred by this Article upon the Board shall be exercised by order or resolution adopted by the affirmative votes of at least four (4) members of the Board. At the regular meeting in September of each year, the Board shall select one of its members to act as President for the ensuing year. The Board shall keep a written record of its proceedings which shall be public.
- (c) The Board shall appoint a Secretary who shall hold office at its pleasure and who shall have the power to administer oaths and affirmations and issue subpoenas in all matters pertaining to the

administration and operation of the System. The Board shall also appoint an actuary who shall hold office at its pleasure, and medical examiners in connection with disability retirement, and such additional clerical and other assistants as the City Council may authorize. All regular and permanent employees of the Board shall, with the exception, of the Secretary, Actuary and Medical Examiners, be appointed under the provisions of Article XIII* of this Charter.

- (d) The Board shall make an annual estimate of the cost of administering the Retirement System and shall transmit the same to the City Manager at such time as he may direct. The City Manager shall cause to be included in his annual estimate of the probable expenses of the City, and the City Council shall appropriate the amount necessary for the administration of the System, to be paid out of the general fund of the City.
- (e) The Board shall possess power to make all necessary rules and regulations for its guidance and shall have exclusive control of the administration and investment of the fund established for the maintenance and operation of the System, subject to the terms, conditions, limitations and restrictions hereinafter set forth. All funds received by the Board not required for current disbursements shall be invested in, but not limited to:

*** See Section 905**

- (1) Those investments of a character legal for banks in the State of California.
- (2) Interest bearing obligations of the United States Government, any agency of the United States Government, any bank which is a member of the Federal Deposit Insurance Corporation, or any corporation whose bonds are eligible for investment by banks in the State of California.
- (3) Common stocks provided that:
 - a. The total of such investments together with the total of all holdings of shares of diversified management investment companies (Mutual Funds) (4 next below) shall not exceed forty (40) percent of the book value of all invested funds of the retirement system.
 - b. Such stock is registered on a national securities exchange, as provided in the "Securities Exchange Act of 1934" as amended. Such registration shall not be required with respect to the following stocks:
 - 1. The common stock of a bank which is a member of the Federal Deposit Insurance Corporations and has capital funds, represented by capital, surplus, and undivided profits of at least fifty million dollars (\$50,000,000);
 - 2. The common stock of an insurance company which

*** This reference is to the Section or Article so designated in the former Charter.**

- has capital funds, represented by capital, special surplus funds, and unassigned surplus of at least fifty million dollars (\$50,000,000).
 - c. Such stocks shall, at the time of purchase, have paid cash dividends for not less than five years next preceding the date of the investment.
 - d. Not more than 2% of the book value of the invested funds of the retirement system may be invested in common stock of a single corporation.
 - e. The total number of shares held in any single corporation shall not exceed 5% of the issued and outstanding common shares of such corporation.
- (4) Shares of diversified management investment companies (Mutual Funds) provided that:
- a. The total of such investments together with the total of all holdings of common stocks (3 next above) shall not exceed forty (40) percent of the book value of all invested funds of the retirement system.
 - b. Such diversified management investment companies shall be registered under the "Investment Company Act of 1940" and shall each have total assets of at least \$50,000,000.
- (5) Preferred stocks and securities convertible into common stocks, provided:
- a. That of the funds invested in such stocks or convertibles not more than 2% of the book value of the invested funds of the Retirement System may be invested in such stocks or convertibles of a single corporation; and
 - b. That the total number of such shares or convertibles held in any single corporation shall not exceed 5% of the issued and outstanding preferred stock or convertibles of such corporation; and
 - c. That the corporations in whose preferred stock or convertible securities the funds of the Retirement System are invested shall be only those whose common stock would qualify for investment of funds of the Retirement System under sub-section 3 above; and
 - d. That such investments authorized by this sub-section 5 does not exceed ten percent of the book value of the invested funds of the Retirement System.
- (6) F.H.A. mortgages, certificates and shares of state or federal chartered savings and loan associations if insured as defined in Title IV of the National Housing Act, provided that such investments shall not exceed fifteen percent of the book value of the invested funds of the Retirement System.
- (7) Equity or mortgage debt investments in existing real property or in property to be constructed, except that no mortgage investments may be funded until the improvements on the

property are substantially complete. Such investments shall not exceed twenty percent of the book value of the invested funds of the Retirement Systems. The Board shall obtain the opinion of competent real estate advisors that such investment is prudent and that it meets the current investment guidelines of the Board, before committing to make such investment, and provided:

- a. The Board is owner in fee title and/or a lease-hold in the real property and/or real property and improvements in and upon which such investment is to be made, with the exceptions of convertible and take-out loans and mortgage pool investments.
- b. Before making such an investment the Board shall appoint a qualified real property appraiser acceptable to the City Manager who shall examine the property of the plans and specifications of any improvement proposed to be constructed and who shall determine and report to the Board whether the project in his opinion will have a fair rental value sufficient to return the investment together with interest over a period of time not to exceed 30 years.

In order to make the provisions of this section relating to the investment of retirement funds completely effective, the Board is authorized for investment purposes only to purchase, sell or lease real property or to enter into options therefor and when necessary for investment purposes to enter into contracts for the construction of buildings and may repair and maintain such property and do any and all things necessary to protect the investment including, but not limited to, purchasing insurance against the loss of the property or the loss of use and occupancy of the property. It may also take any other action necessary to carry out the investment provisions of this section. In the construction of buildings, the Board shall follow, substantially and insofar as applicable, the procedure and limitations prescribed by law for the construction of buildings by the City of Oakland. (Amended by: Stats. June 30, 1983.)

The Board may secure from competent investment counsel, not a member of the Board, such counsel and advice as to investing the funds of the Retirement System as it deems necessary. Discretionary powers granted such investment counsel will be at the option of the Board. The Board shall pay for such counsel and advice such compensation as it deems reasonable, payable from Retirement System funds.

The City Treasurer shall be the custodian of the Retirement Fund, subject to the exclusive control of the Board as to the administration and investment of said fund. All payments from the said fund shall be made by the Finance Director as authorized by the Board. All demands against said fund shall be presented, audited and paid as provided in the Charter of the City.

Interest on any cash and on any investments constituting a part of the said fund shall be paid into said fund as received.

Except as herein provided, no member and no employee of the Board, shall have any interest, direct or indirect, in the making of any investment, or in the gains or profits accruing therefrom. And no member or employee of said Board, directly or indirectly, for himself or as an agent or partner of others, shall borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by said Board; nor shall any member or employee of said Board become an endorser or surety or become in any manner an obligor for moneys invested by the Board. (Amended by: Stats. 1971, 1974; May 13, 1982.)

- (f) Board shall have such additional power and authority as is conferred by Section 20* of this Charter.
- (g) If any section, word, clause or provision of this Article shall be held unconstitutional, the remaining sections, clauses, words or provisions thereof shall not be affected thereby. All the provisions of this Article are to be liberally construed. (Amended by: Stats. 1971)

Duties of Retirement Board, Actuarial Investigation And Valuation

Section 2602. The Board shall exercise the powers and perform the duties conferred on it by other sections hereof, and in addition thereto:

- (a) Interest on Contributions. Shall credit contributions of members, of beneficiaries, and of the City with interest at a rate fixed by the Board from time to time.
- (b) Actuarial Data. Shall keep in convenient form such data as shall be necessary for the actuarial valuation of the Retirement System. As of June 30, 1956, and thereafter at intervals of not to exceed three (3) years, the Board shall make an actuarial investigation into the mortality, service, and compensation experience of the members and beneficiaries, and further (1) with respect to persons exercising the option in Section 2600 and (2) with respect to persons who become members on and after the effective date of this Article, shall make an actuarial valuation of the assets and liabilities of the Retirement System. From time to time, the Board shall determine the rate of interest being earned on the Retirement Fund. Upon the basis of all or any of such investigation, valuation, and determination, the Board shall:
 - (1) Adopt for the Retirement System such interest rate and such mortality, service and other tables, or any of such items, as shall be deemed necessary;

* This reference is to the Section or Article so designated in the former Charter.

- (2) Make sure revision in the City's and members' rates of contribution under the Retirement System with respect to persons who become members of the Police or Fire Department, after the effective date of this Article, as shall be deemed necessary to comply with Section 2619 of this Article.
- (c) Additional Records. In addition to other records and accounts shall keep such records and accounts as shall be necessary to show at any time:
 - (1) The total contributions of members made after the effective date hereof, with credited interest;
 - (2) The total contributions of retired members made after the effective date hereof, with credited interest; less the annuity payments made to such members;
 - (3) The accumulated contributions of the City held for the benefit of members on account of service rendered as members of the Retirement System.
 - (4) All other accumulated contributions of the City, which shall include the amounts available to meet the obligation of the City on account of benefits that have been granted.
- (d) The morality, service, and other tables and the City's members' rates of contribution with respect to persons who become members of the Police or Fire Department after the effective date of this Article, as recommended by the actuary and the valuations determined by him and approved by the Retirement Board shall be conclusive and final, and the Retirement System shall be based thereon. (Amended by: Stats. June 1976.)

Section 2603. The Board may and in disputed matters shall hold public hearings in all proceedings pertaining to retirement and to the granting of retirement allowances, pensions, and death benefits. Notice of the time and place of such hearing shall be given in writing to the member or dependents affected thereby either by personal service of a copy of said notice or by depositing a copy thereof in the United States Mail postage prepaid addressed to the member or dependents affected thereby at his or their last known address at least five (5) days prior to said hearing. Proof of said service must be made at said hearing. The member or dependents affected thereby shall be entitled to appear personally at said hearing and to have counsel.

Section 2604. A rehearing in any matter may be applied for by filing a written petition for rehearing with the Secretary of the Board within ninety (90) days after mailing of notice by registered mail to the interested party or his attorney, of the rendition of any order or decision of the Board. The Board shall grant or deny such petition within forty (40) days from the filing thereof, provided that the time so limited may be extended by the Board for not to exceed forty (40) additional days. If a hearing is granted, the same shall be heard within forty (40) days after the rendition of the order granting the same. At such rehearing additional evidence not produced at the original hearing may be introduced. The petition must designate the grounds upon which it is based.

Section 2605. Any member of the System or dependent affected thereby who is dissatisfied with any order or decision of the Board may, without first applying to the Board for a rehearing, apply to the Superior Court of the State of California in and for the County of Alameda for a Writ of Mandate in accordance with the provisions of the Code of Civil Procedure of the State of California. Upon the hearing of any such application for a Writ of Mandate, all questions of both law and fact must be tried or heard anew in the Superior Court.

Section 2606. The provisions of Sections 2604 and 2605 shall be available to any member of the System or dependent affected by any order or decision of the Board without prejudice to the right to pursue any other remedy provided for by the laws of the State of California.

Section 2607. The following words and phrases, as used in this Article, unless a different meaning is plainly required by the context, shall have the following meaning:

"Retirement allowance," "Death allowance," or "allowance" shall mean equal monthly payments, beginning to accrue upon the date of retirement, or upon the day following the date of death, as the case may be, and continuing for life, unless a different term of payment is definitely provided by the context.

"Compensation" as distinguished from benefits under the Labor Code of the State of California, shall mean the monthly remuneration payable in cash, by the City, without deduction, for time during which the individual receiving such remuneration is a member of the Police or Fire Department, but excluding remuneration paid for overtime and for special details or assignments as provided in Sections 91 and 97* of the Charter.

"Benefit" shall include "retirement allowance," "death allowance," "allowance," and "death benefit."

"Compensation attached to the average rank held" shall mean the compensation attached to the lowest rank held during the three years immediately preceding retirement plus one thirty-sixth (1/36) of the difference between it and the compensation attached to any higher rank held during that period of each month, and fraction thereof, the higher rank was held.

For the purposes of the Retirement System established by this Article, the terms "member of the Police or Fire Departments," "member of the Department," "member of the System," or "member" shall mean any regularly appointed member of the Police or Fire Department of the City of Oakland who became members of the Retirement System established by this Article, prior to July 1, 1976, including matrons or substitute matrons of the City Prison and emergency patrolmen and hosemen.

"Retirement System" or "System" shall mean the Police and Fire Retirement System established by this Article.

"Charter" shall mean the Charter of the City of Oakland.

"Interest" shall mean interest at the rate adopted by the Retirement Board.

"Retirement Board," or "Board" shall mean the Police and Fire Retirement Board created by this Article.

* This reference is to the Section or Article so designated in the former Charter.

"Children" shall include, with respect to service retirement, children adopted at least five (5) years prior to retirement, and with respect to disability retirement and death before retirement, children adopted at any time prior to such retirement or death.

Words used in the masculine gender shall include the feminine and neuter genders; singular numbers shall include the plural, and the plural the singular, and wife shall include husband, and widow shall include widower.

"Accumulated contributions: shall mean contributions made by the member since May 3, 1943, plus credited interest. (Amended by: Stats. June 1976.)

Retirement for Service

Section 2608.

- (a) Any member of the Police or Fire Department who completes at least ten (10) years of service in the aggregate (said service to be computed under Section 2609) may retire at his option on or after the twenty-fifth (25th) anniversary of his date of employment. Said member shall receive a retirement allowance equal to twenty percent (20%) of the compensation attached to the average rank held during the three (3) years immediately preceding such retirement, plus an additional allowance at the rate of two percent (2%) for each additional year of service beyond ten (10) years, not to exceed a period of an additional ten (10) years.
- (b) Any member of the Police or Fire Department who completes at least twenty (20) years of service in the aggregate (said service to be computed under Section 2609), regardless of age, may retire at his option. Said member shall receive a retirement allowance equal to forty percent (40%) of the compensation attached to the average rank held during the three (3) years immediately preceding such retirement, plus an additional allowance at the rate of two percent (2%) for each additional year of service beyond twenty (20) years, not to exceed a period of an additional five (5) years.
- (c) Any member of the Police or Fire Department who completes at least twenty-five (25) years of service in the aggregate (said service to be computed under Section 2609), regardless of age, or any member who completes at least twenty (20) years of service in the aggregate at or after attaining the age of fifty-five (55) years, may retire for service at his option.
- (d) Members shall be retired on the first day of the month next following the attainment by them of the age of sixty-five (65) years. Any such member who attains the age set forth in the preceding sentence as the compulsory age of retirement during any twelve (12) months, prior to the beginning of the twelve (12) months, shall be retired on the first day of the twelve (12) months.
- (e) A member retired after meeting the requirements of paragraphs (c) or (d) next preceding, shall receive a retirement allowance equal to fifty percent (50%) of the compensation attached to the average rank held during the three (3) years immediately preceding such retirement, plus an additional allowance at the rate of one and two-thirds percent

(1 2/3%) of said compensation for each year of service rendered after July 1, 1951, and after qualifying for service retirement, not to exceed ten (10) years. A member required to retire under paragraph (d) next preceding before completing twenty (20) years of service in the aggregate computed under Section 2609, shall receive a retirement allowance which bears the same ratio to the retirement allowance which said member would receive if he were entitled to be credited with twenty (20) years of service, as the service with which he is entitled to be credited, bears to twenty (20) years.

- (f) Upon the death of member after qualification for service retirement, or after retirement for service or because of disability, and if death shall result from other cause than injury received in or illness caused by the performance of duty, two-thirds (2/3) of the retirement allowance to which the member would have been entitled if he had retired for service at the time of death, or two-thirds (2/3) of the retirement allowance as it was at death, as the case may be, shall be continued, regardless of the age of the surviving widow, to the dependents of the member in the order of succession as defined in Section 2612, provided that if retirement was for injury received in or illness caused by the performance of duty and if death occurs prior to the date upon which the member would have qualified for service retirement, the allowance continued shall be reduced upon said date in the same manner as it would have been reduced had the member not died.
- (g) After having qualified for service retirement under the provisions of paragraph (a) of this section, a member shall be entitled to retire at any time thereafter and nothing shall deprive said member of said right.
- (h) The age of a member which was accepted for appointment to the Police or Fire Department shall be admissible in evidence as prima facie proof of his age for retirement purposes.
- (i) If, at the date of retirement for service or disability, said member has no wife, children or dependent parents, who would qualify for the continuance of the allowance after the death of said member, or with respect to the portion of the allowance which would not be continued, regardless of dependents, a member retired under this Article may elect, before the first payment of the retirement allowance is made, to receive the actuarial equivalent of his allowance or the portion which would not be continued, regardless of dependents, as the case may be, partly in a lesser amount to be received by him throughout his life, and partly in other benefits payable after his death to another person or persons, provided that such election shall be subject to all of the conditions prescribed by the Council to govern similar election by members of the Oakland Municipal Employees' Retirement System. (Amended by: Stats. June 1976.)

Time and Service To Be Included

Section 2609. The following time and service shall be included in the computation of the service to be credited to a member for the purpose of qualification for retirement and death benefits and for calculation of retirement benefits:

(1) Time during and for which said member received compensation as a member of the Police or Fire Department prior or subsequent to the effective date of this Article, including all such time said member was unable to perform his duties by reason of injury or sickness from any cause.

(2) Time during which said member was absent by reason of service with the armed forces of the United States either during a war involving the United States as a belligerent, or in any other National Emergency and for six (6) months thereafter and who is not dishonorably discharged or released therefrom.

(3) Any police or fire service outside the limits of the City of Oakland performed by a member of the Police or Fire Department and under orders of a superior officer of such member, shall be considered as city service and any disability or death resulting therefrom shall be considered as received in and arising out of the performance of duty.

Disability Retirement

Section 2610.

(a) Any member of the Police or Fire Department who is incapacitated for the performance of duty by reason of any injury received in, or illness caused by or arising out of the performance of duty may be retired not sooner than one (1) year after said member first became incapacitated by reason of said injury or illness unless the member requests and the Board grants earlier retirement; and, if not qualified for service retirement shall receive a retirement allowance equal to seventy-five percent (75%) of the compensation attached to the average rank held by such member during one (1) year immediately preceding such retirement. Such retirement allowance shall be paid until the date upon which said member would have completed twenty-five (25) years of service and qualified for service retirement had such member rendered service without interruption, and on and after said date said retirement allowance shall be equal to the retirement allowance said member would have received if retired for service on said date, based on the compensation attached to the average rank held during the one (1) year next preceding retirement. If at the time of retirement for disability, the member is qualified for retirement for service, said member shall receive a retirement allowance computed under the provisions of Section 2608.

(b) Any member of the Police or Fire Department who is incapacitated for the performance of duty for any cause not included in the provisions of the preceding paragraph (a) and who shall have completed at least five (5) years of service in the aggregate, shall be retired upon a retirement allowance calculated under Section 2608, if he has attained the age of fifty-five (55) years, otherwise upon a retirement allowance equal to one and one-half percent (1-1/2%) of

the compensation attached to the average rank held by such member during the three (3) years next preceding such retirement for each year of service, provided that said retirement allowance shall not be less than thirty-three and one-third percent (33-1/3%) of said compensation. The question of retiring a member under this section may be brought before the Board on the Board's own motion, by recommendation of the City Manager or by petition of said member or his guardian.

- (c) The Board may at any time order any member who has been retired for disability to be examined by one or more physicians appointed by the Board for that purpose, and if it is found that the disability has ceased, shall order that the retirement allowance shall cease and said member shall be restored to the service in the rank occupied at the time of retirement. (Amended by: Stats. June 1976)

Death From Service-Connected Causes

Section 2611. If a member of the System shall die before or after retirement by reason of an injury received in, or illness caused by or arising out of the performance of duty, an allowance shall be paid to the dependents of such member in the order of succession established by Section 2612, in the following amount:

(1) If the member at the time of death was qualified for service retirement but had not retired, the allowance shall be equal to the retirement allowance which the member would have received if he had retired for service on the date of death, but such allowance shall not be less than one-half (1/2) of the compensation attached to the rank held by such member at the time of his death.

(2) If death occurs prior to qualification for service retirement, the allowance shall be equal to one-half (1/2) of the compensation attached to the rank held by such member at the time of death.

(3) If death occurs after retirement, the allowance shall be equal to the retirement allowance of the member, except that if retirement was for disability due to performance of duty, and if death occurred prior to the date upon which the member would have qualified for service retirement, the allowance shall be reduced upon said date in the same manner as it would have been reduced had the member not died. If retirement was for disability not due to performance of duty, the allowance shall not be less than one-half (1/2) of the compensation attached to the average rank held by the member during the one (1) year immediately preceding retirement.

(4) The allowance provided for in paragraphs (1) and (2) immediately preceding, if payable to the widow of such member, shall be increased while there are children of such member as provided in Section 2612.

(5) The widow of such member shall be eligible to receive the allowance provided for in this section without regard to the time of her marriage to such member; provided that in the event the death of such member shall occur after retirement, such marriage shall have occurred at least one year prior to retirement.

Death of Member; Payment of Benefits; Order of Succession

Section 2612.

(1) In cases in which a benefit is payable to the dependent of a deceased member under the provisions of this Article, such benefit shall be payable to the family of such member in the following order of succession:

- (a) To the surviving spouse of such member as long as he or she shall not remarry prior to January 1, 1985, provided that, if death occurred after retirement, the surviving spouse shall have been married to the decedent at least one (1) year prior to the member's retirement; and provided further that in the event such decedent leaves a surviving child or children and if death occurred prior to retirement, an additional amount shall be paid to such surviving spouse during the lifetime of each child until said child shall have married or attained the age of eighteen (18) years as follows: For one child, twenty-five percent (25%) of the allowance provided for in this Article; for two children, forty percent (40%) of such allowance, and for three or more children fifty percent (50%) of such allowance, provided that the aggregate payments to the surviving spouse under this section shall not exceed seventy-five (75%) percent of the compensation attached to the rank held by the decedent at the time of his or her death. Upon a remarried spouse's death, the member's retirement allowance shall cease unless there are eligible children.
 - (b) In the event the decedent shall not leave surviving an eligible spouse to receive said allowance, but shall leave a child or children under the age of eighteen (18) years, or should the decedent leave an eligible spouse and a child or children under the age of eighteen (18) years and the spouse dies while said child or children are yet under the age of eighteen (18) years, then the retirement allowance is payable to such child or children collectively until the youngest child attains the age of eighteen (18) years, provided that no child shall receive any such allowance after attaining the age of eighteen (18) years or marrying.
 - (c) In the event the decedent shall leave surviving him no eligible widow, child or children but shall leave a parent or parents dependent on said member for their support, then to such parent or parents collectively in an amount or amounts to be determined by the Board in the proportion that the degree of support furnished by decedent bears to the allowance which would have been payable to an eligible widow of such decedent. **(Amended by: Stats. June 3, 1986.)**
- (2) In the event a deceased member leaves no dependents qualified to receive an allowance, there shall be payable a death benefit as follows:
- (a) If death occurs before retirement, a sum equal to the member's accumulated contributions in the Fund plus an amount equal to one-twelfth (1/12th) of the annual compensation attached to the rank held by such member at the time of death for each completed year of

service as a member at the time of death for each completed year of service as a member of the Police or Fire Department, not to exceed six (6), to his designated beneficiary, and if none, then to the estate of such member.

- (b) If death occurs after retirement, then the sum of One Thousand Dollars (\$1,000.00) to the beneficiary designated by such member, or if none, then to the estate of such decedent.

No Forfeiture Of Pension Earned

Section 2613. Whenever any member of the System or a dependent of such member receiving a retirement allowance under the provisions of this Article shall willfully disobey any rule or regulation of the Board with the intention of being insubordinate, or shall be convicted of felony or shall become dissipated or shall become an habitual drunkard, in such event the Board may order that the retirement allowance payable to such member or dependent shall not be paid to such person but shall thereupon become payable to the family of such member next in order of succession as provided in Section 2612 of the Article.

Hernia, Heart Trouble and Pneumonia

Section 2614. The terms "injury" or "illness" as used in this Article shall be construed to include hernia, heart trouble and pneumonia which develops or manifests itself during a period while a member of the System is in the active service of the Police or Fire Department. Such hernia, heart trouble or pneumonia so developing or manifesting itself shall be presumed to have been caused by and to have arisen out of and in the course of the performance of duty in such active service. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the Board is bound to find in accordance with it.

City Service, Restrictions

Section 2615.

(1) No member of the System who is retired for service or disability under this Article shall hold an elective or appointive position in the service of the City of Oakland, including membership on Boards or Commissions, except that retired members of the Police and Fire Departments may serve on the Police and Fire Retirement Board as provided in Section 2601, nor shall any such person receive any payment for service rendered to the City, provided that service, such as an election officer or juror shall not be affected by this section.

(2) Retired members of the System or dependents of such members under the provisions of this Article shall not be subject to residence requirements. (Amended by: Stats. May 13, 1982.)

Section 2616.

(1) In the event of the death of or injury to any member of the System caused by the unlawful or negligent act of a third person while such member is acting in the performance of duty as a member of the Police or Fire Department or otherwise, any judgment for damages for such death or injury recovery by such member or dependent or personal representative shall not affect in any manner the amount of any allowance or death benefit payable to such member or dependents under the provisions of this Article. This section shall not be construed as in any manner prohibiting the City of Oakland or the Retirement

System from recovering from said third person its damages.

(2) It is the intention of this section that allowances granted to or on account of members of the System for injury, illness or death incurred in the performance of duty shall not be cumulative with benefits under the Labor Code of California awarded as the result of the same injury, illness or death. If any member of the System or dependent receives compensation under the Labor Code for disability or death rising out of and in the course of the performance of duty, any payment on account thereof shall be applied as a credit and set-off against any payment on account of salary granted to such member under Articles XIV and XV, or retirement allowance or other benefit granted to or on account of such member under the provisions of this Article as follows:

- (a) If the amount is paid in one sum or in installments equal to or greater than such salary, retirement allowance, or other benefit, such member or dependent shall not receive any salary, retirement allowance, or other benefit until the total amount of the salary, retirement allowance, or other benefit which would otherwise be payable equals the total amount received under the Labor Code.
- (b) If the amount is paid in installments less than such salary, retirement allowance, or other benefit, the salary retirement allowance or other benefit shall be reduced so that the total of salary, retirement allowance, or other benefit plus the amounts received under the Labor Code will equal the salary, retirement allowance or other benefit which would otherwise be due.
- (c) In either case any award specifically granted for medical, surgical, or hospital expenses shall not reduce the salary, retirement allowance, or other benefit.
- (3) No benefits shall be paid under this Article on the basis of an award by the Industrial Accident Commission of the State of California.

Death From Non-Service-Connected Causes

Section 2617. In the event of the death of a member of the System under this Article, from causes other than injury received in or illness caused by or arising out of the performance of duty, a benefit shall be payable as follows:

- (a) Whenever any member of the System, other than a retired member or a member eligible to retire for service, who shall have completed ten (10) years or more of service in the aggregate, shall die from causes other than those arising out of the performance of duty, then an allowance equal to thirty-three and one-third (33-1/3%) percent of the compensation attached to the rank held by such member at the time of death, shall be paid to the dependents of such members as provided in Section 2612, and increased while there are children of such member as provided in that section.
- (b) Where the member does not qualify under the provisions of paragraph (a) next preceding, one-twelfth (1/12th) of the annual compensation attached to the rank held by the member at the time of his death, for each completed year of service in the Police or Fire Department, not to exceed six (6), plus the accumulated contributions of such member

in the Fund, said aggregate sum to be payable to the dependents of such member pursuant to the order of succession established by Section 2612.

- (c) If there be no dependents eligible to receive such benefits under the provisions of Section 2612, said aggregate amount in paragraph (b) next preceding shall be payable to the designated beneficiary of such member or if none, then to the estate of such member.

Resignation Or Dismissal

Section 2618.

- (a) Should a member of the System cease to be a member of the Police or Fire Department through any cause other than death or retirement prior to completing ten (10) years of service, the member's contributions, plus interest thereon credited in accordance with Section 2602(a), shall be refunded to such member.
- (b) Should a member of the System cease to be a member of the Police or Fire Departments after completing at least ten (10) years of service, said member may withdraw his contributions, plus interest thereon credited in accordance with Section 2602(a) from the fund at any time provided such person is not then an active member of the Police or Fire Department, but such person will not be entitled to a retirement allowance unless he is a member who has redeposited in the Fund in accordance with subsection (c) below and who has complied with the requirements of Section 2608.
- (c) If any person who has been refunded his contributions under paragraph (a) preceding, or who has withdrawn his contributions under paragraph (b) preceding shall subsequently become a member of the Police or Fire Department, he shall redeposit in the Fund in a manner to be determined by the Board, the amount so refunded or withdrawn plus interest from the date of the refund or withdrawal to the date of the redeposit, in which event said member shall be entitled to credit for all service rendered prior to withdrawal as such member.
(Amended by: Stats. June 1976.)

Members' And City's Contributions

Section 2619. All payments provided for or on account of persons who are members under this Article and for or on account of persons who remain as members or who have been members of the Funds under Articles XIV and XV, shall be made from funds derived from the following sources, plus interest earned on said funds.

(1) The normal rate of contribution of each member who exercised the option in Section 2600 shall be five and one-half percent (5-1/2%). The normal rate of contribution of each person who became a member of the Police or Fire Department after the effective date of this Article and prior to July 1, 1976, shall be based on his age taken to the next lower completed quarter year, at the date he becomes a member of the Police or Fire Department, and shall be such as, on the average for each such member, will provide, assuming service without interruption, one-fourth (1/4) of that portion of the service retirement allowance to which he would be entitled, without continuance to dependents, upon first

qualifying for retirement under Section 2608, and assuming the contribution to be made from the date of his entrance into the Police or Fire Department. Provided that said members' contribution rates shall never decrease below the table of members' contribution rates in effect as of January 1, 1971, and provided further that no member's contribution rate shall exceed thirteen percent (13%) so long as no improvements in the members' benefits occur after July 1, 1976.

(2) The dependent rate of contribution of each person who becomes a member of the Police or Fire Department after the effective date of this Article, shall be such as, on the average for such member, will provide, assuming service without interruption, and upon his first qualifying for service retirement under Section 2608, one-fourth ($1/4$) of the portion of his allowance which is to be continued under Section 2608, after his death and throughout the life of a surviving wife whose age at said death is three years less than the age of said member, or, as the case may be, a surviving husband whose age at said death is three years more than the age of said member. The dependent rate of contribution of each member who exercises the option in Section 2600, shall be one and one-half percent ($1-1/2\%$). If at the date of retirement for service or retirement for disability, said member has no wife who would qualify for the continuance of the allowance to her after the death of said member, the dependent contributions with accumulated interest thereon, shall be paid to him forthwith.

(3) The normal rate of contribution of persons who remain members under Article XIV and XV shall be five percent (5%). Such rate shall be applied to compensation, on and after the effective date of this Article, as described in paragraph 4 of this section. Such persons shall not have dependent contribution rates.

(4) There shall be deducted from each payment of compensation made to a member throughout his membership, a sum determined by applying the member's normal and dependent rates of contribution to such compensation payment. Except for persons who remain members under Article XIV and XV, the sum so deducted shall be accumulated with interest as set from time to time as provided in Section 2602(a). Such accumulated contribution shall be used to provide benefits for said members, or shall be paid to said member or his estate or beneficiary as provided in this Article.

(5) Members' contributions deducted from compensation earned prior to the effective date of this Article, and after May 3, 1943, shall not be considered in the determination of allowances, and shall be paid to the Retirement System, with interest, by the City when said accumulated contributions otherwise are payable to or on account of members by the Retirement System.

(6) The City shall contribute to the Retirement System such amounts as may be necessary, when added to the contributions referred to in the preceding paragraphs of this Section, to provide the benefits payable under this Article and Articles XIV and XV. The City contributions made periodically during the year shall be such as when added to member contributions will actuarial fund all liabilities for all members prior to July 1, 1976, by July 1, 2026. Any fund established pursuant to the 1971 amendment to this subsection and implemented by Retirement Board Resolution No. 3968 which provided for payment of

improved or additional benefits shall continue only for the purposes stated herein. Any monies held in such fund as of July 1, 1976, and any interest credited thereon pursuant to Section 2602(a) shall continue to be payable to members of this system as follows:

- (a) For all individuals who received retirement allowances as of December 31, 1972, said allowance commencing January 1, 1973, shall be increased as follows:
 - (1) A computation of an additional one percent (1%) of the gross allowance due in December, 1972, shall be made for each said individual. Any additional monies added to the basic retirement allowance because of minor children under Charter Section 2612(a) shall not be included in the computation of said one percent (1%).
 - (2) The amount of each said December, 1972, one percent (1%) computation shall become a fixed, non-fluctuating amount which shall be added each month, commencing in January, 1973, to the retirement allowance of each said individual and to any continuation (and in the appropriate percentage to any partial continuation) of each said retirement allowance.
- (b) For members of the System retiring after December 31, 1972, at the date of retirement, a computation of an additional five percent (5%) of the compensation attached to the average rank held by such member during the three (3) years next preceding said retirement shall be made for each individual retiring with at least twenty-five (25) years of service.

The amount of each said five percent (5%) computation shall become a fixed, non-fluctuating benefit amount which shall be added in monthly installments to the retirement allowance of each said individual retiring or who is considered as retiring with at least twenty-five (25) years of service and to any continuation (and in the appropriate percentage to any partial continuation) of each said retirement allowance.

No additional monies from any source whatsoever shall be paid into said fund, and said fund shall cease to exist when the monies held payable for the aforementioned purposes are expended.

(7) During the absence of a member by reason of service with the armed forces of the United States, either during a war involving the United States as a belligerent, or in any other National Emergency and for six (6) months thereafter, and who is not dishonorably discharged or released therefrom, the City shall contribute for and on behalf of such member, amounts equal to the contributions which would have been made by such member and by the City to the Police and Fire Retirement Fund if he had not been so absent. The contributions made by the City pursuant to the provisions of this paragraph in lieu of contributions which the member otherwise would have made, shall be made available only for the purpose of retirement and death after the completion of ten (10) years of service in the aggregate, and in the event of the resignation or dismissal of said member from service as a member of the Police or Fire Department prior to qualifying for

service retirement, or in the event of the death of such member from causes not arising out of the performance of duty prior to the completion of ten (10) years of such service, any withdrawal of accumulated contributions by such member or any death benefit payable by reason of such death shall include only that portion of the accumulated contributions actually made by such member. For the purposes of this Article, a war involving the United States as a belligerent exists: (a) whenever Congress has declared war, and peace has not been formally restored; (b) whenever the United States is engaged in active military operations against any foreign power, whether or not war has been formally declared; or (c) whenever the United States is assisting the United Nations, in actions involving the use of armed force, to maintain or restore international peace and security. (Added by: Stats. 1951. Amended by: Stats. June 1976. Amended by: Stats. June 1988.)

ARTICLE XXVII

Added by: Stats. 1955

OFF-STREET VEHICULAR PARKING

General

Section 2700. In addition to all other powers elsewhere enumerated in this Charter or granted or hereafter granted to the City of Oakland by the Constitution or laws of the State of California, the City of Oakland shall have power to acquire (whether by purchase, lease, eminent domain, or otherwise), construct, establish, improve, extend, maintain, operate, administer, lease and sublease off-street vehicular parking facilities, and places within the City of Oakland, including any and all public parking lots, garages, or other automotive parking facilities, in order to relieve traffic congestion and promote the welfare of the citizens and inhabitants of said City, and, for the payment of the cost thereof, to issue bonds payable from the revenues of any such off-street vehicular parking facilities and from other revenues, all as hereinafter provided in this Article. One of the prime purposes of conferring the above mentioned powers upon the City of Oakland is to aid in providing low cost off-street parking for automotive vehicles within sections or portions of the City where additional off-street parking is needed.

Definitions

Section 2701. The following terms whenever used or referred to in this Article, or in any resolution of issue, shall have the following meanings, respectively, unless a different meaning appears from the context:

- (a) **BONDS.** The term "bonds" or "revenue bonds" means the written evidence of any obligation issued by the City, payment of which is secured by a pledge of revenues or any part of revenues, as provided in this Article, in order to obtain funds with which to carry out any of the purposes of this Article, irrespective of the form of such obligation. All revenue bonds issued pursuant to this Article shall be payable exclusively from revenues.
- (b) **PROJECT.** The term "project" means any one or more off-street vehicular parking facilities referred to in Section 2700 and designated by the City as a project in a resolution of issue.

- (c) **EXISTING OFF-STREET PARKING FACILITIES.** The term "existing off-street parking facilities" means and includes any off-street vehicular parking facilities now or hereafter owned by the City and operated or controlled by the City at the time of adoption of a resolution of issue and not theretofore designated by the City as a project in a resolution of issue and not acquired, constructed, established, improved, extended, maintained, or operated, in whole or in part from the proceeds of sale of any revenue bonds.
- (d) **REVENUES.** The term "revenues" means and includes any and all rates, fees and other charges received or receivable in connection with, and any and all income and receipts of whatever kind and character derived by the City from, the operation of a project, or arising from a project, including any such revenues as may have been or may be impounded or deposited in any fund created for the security or further protection of revenue bonds or for the purpose of providing for the payment of the principal thereof or the interest thereon. The term "revenues" also includes (a) net revenues from on-street parking meters within the City now owned or controlled or hereafter acquired or controlled by the City and (b) net revenues of any existing off-street parking facilities to the extent that net revenues from either or both of said sources shall be pledged or otherwise made available for the payment of operation and maintenance costs of any project or as security or further protection for bonds by a resolution of issue.
- (e) **NET REVENUES.** The term "net revenues" when used with reference to on-street parking meters within the City means and includes the gross revenues collected by the City during any fiscal year from the establishment and operation of such on-street parking meters after deducting therefrom the actual necessary costs and expenses of (a) the acquisition, installation, maintenance and replacement of such parking meters, (b) the collection of revenues therefrom and (c) enforcement of all parking meter ordinances and regulations, all calculated on sound accounting principles, but without any allowance for depreciation or obsolescence. The Council of the City of Oakland may determine that the term "net revenues" when used with reference to any existing off-street parking facilities means and includes the gross revenues collected by the City during any fiscal year from the establishment and operation of such existing off-street parking facilities after deducting therefrom all taxes and payments in lieu of taxes payable with respect to such facilities and the actual necessary expenses of maintaining and operating such facilities, calculated on sound accounting principles, but without any allowance for depreciation or obsolescence.
- (f) **RESOLUTION OF ISSUE.** The term "resolution of issue" means any agreement entered into by the Council, including any resolution adopted by the Council, pursuant to which revenue bonds are issued,

and includes any agreement entered into or resolution adopted by the Council amending, modifying or supplementing a resolution of issue irrespective of the form thereof.

Grant of Power

Section 2702. Without limiting the generality of Section 2700, the Council of the City of Oakland for any of the purposes of this Article shall have the powers set forth in this section.

- (a) **Acquisition and Disposition of Property.** To acquire, by grant, purchase, gift, devise, lease or by the exercise of right of eminent domain, and to hold, use, sell, lease, sublease or dispose of any real or personal property or any interest in any thereof, including rights-of-way, necessary or appropriate for the full exercise, or convenient or useful for the carrying on of any of its powers pursuant to this Article, except property being used as a facility for the parking of motor vehicles shall not be condemned by the City, unless (a) the project to be furnished or constructed which necessitates the acquisition of the existing parking facility when completed will provide a parking capacity at least three times the parking capacity provided by the existing facility; (b) unless affirmative action indicating the intent of the City to that end shall have been taken prior to the commencement of said condemnation proceedings; and (c) the proposed off-street parking improvement is planned or located in a manner which will be most compatible with the greatest public good and the least private injury. Properties devoted to off-street parking owned by the same person, corporation or other entity and operated under the same general management, under similar rules and regulations, intended generally to serve the same area and within one hundred feet of each other shall be considered an "existing parking facility" for the purposes of this subdivision (a) of Section 2702.
- (b) **Acquisition for Project Ingress and Egress.** To acquire, by any of the means specified in the foregoing paragraph (a) any lands, property or rights-of-way necessary or convenient for the opening, widening, straightening and extending of streets or alleys necessary or convenient for the ingress to or egress from any project.
- (c) **Improvements.** To improve any lands so acquired by the construction thereon of garages or other buildings or improvements necessary or convenient for any project.
- (d) **Control of Project.** To construct or cause to be constructed, established, improved, extended, maintained, operated, and to administer, lease and sublease any project.
- (e) **Rates, Fees and Charges.** To fix rates, fees or charges for the use of the facilities provided by any project, or for any services rendered in connection therewith, and to alter, change or modify the same at its pleasure, subject to any contractual obligation which may be entered into by the City with respect to the fixing of such rates, fees or charges; and, by a resolution of issue or otherwise, to enter into covenants to increase or decrease rates, fees or charges from time to

time, except as may be otherwise specifically provided in a resolution of issue. All rates, fees and charges shall be paid only in such coin or currency as on the date of payments is legal tender for public and private debts, or in scrip or tokens issued only upon payment of the face value thereof in such coin or currency.

- (f) **Issuance of Revenue Bonds.** At any time and from time to time to issue revenue bonds in order to raise funds for the purpose of establishing any project or of acquiring lands including rights-of-way for any project or for acquiring, constructing, improving, extending, maintaining, operating or administering any project, or of refinancing any project, or for any combination of such purposes, which bonds may be secured as hereinafter provided.
- (g) **Agreements and Leases.** To make contracts, leases, subleases and agreements relative to the acquisition, construction, improvement, operation or maintenance of any project or any part of any project with any person, private corporation or public corporation, political subdivision, city, county, district, the State of California, or the United States of America, or any department or agency of any thereof, subject to any contractual obligation which may be entered into by the City with respect to the issuance of bonds.
- (h) **Lease of Space for Commercial Purposes.** To rent or lease for commercial purposes space in any project which in the opinion of the Council is not and will not during the term of such lease be required for off-street vehicular parking facilities, provided that the aggregate of all such space so rented or leased for commercial purposes at any one time in any project shall not exceed twenty percent (20%) of the surface area of such project and that the term of any such rental or lease shall not exceed a period of fifteen (15) years from its date.
- (i) **Rules and Regulations.** To adopt such rules and regulations as may be necessary regarding the operation and maintenance of any project and to enable the City to exercise the powers and perform the duties conferred or imposed by this Article.
- (j) **Miscellaneous.** To do any and all acts or things necessary or appropriate to carry out the purposes of this Article and the provisions, covenants and agreements contained in any resolution of issue adopted pursuant to the authority conferred by this Article; provided that nothing in this section or elsewhere in this Article contained shall be construed directly or by implication to be in any way in derogation or in limitation of any powers conferred upon or existing in the City by virtue of the provisions of the Constitution or laws of the State of California or any other provision of this Charter.

Pledge Of Net Parking Meter Revenues

Section 2703. In addition to all other powers elsewhere enumerated in this Article, the Council shall have power to pledge, place a charge upon, or otherwise make available and authorize payment of all or any part of net revenues collected by the City from the establishment and operation of (a) on-street parking meters within the City now owned or controlled or hereafter acquired or controlled by

the City, and (b) existing off-street parking facilities for such periods of years as shall be determined by the Council, for the payment of operation and maintenance costs of any one or more projects authorized by this Article or as security or further protection for the payment of principal of and interest on bonds issued pursuant to this Article.

Authorization Of Revenue Bonds

Section 2704. Each issue of revenue bonds shall be authorized by the Council by a resolution of issue adopted by affirmative votes of at least a majority of the members of the Council at a duly assembled meeting. Resolutions of issue shall provide for the aggregate principal amount, date or dates, maturities, interest rates, denominations and form, and may provide for the registration, transfer and interchange, of any revenue bonds and coupons issued pursuant to this Article; and shall prescribe the purpose or purposes for which said bonds are to be issued and the terms and conditions on which said bonds are to be executed, issued, secured, sold and paid, and, if desired, the terms and conditions on which said bonds may be redeemed prior to maturity or refunded. The Council may provide for one or several issues of bonds and may issue bonds in series, or may divide any issue into one or more series or divisions and fix different maturities or dates for each series or division, different rates of interest, or different terms and conditions for the bonds of the several series or divisions. Bonds of the same authorized issue need not be of the same kind or character, have the same security, or be of the same interest rate, but the terms thereof shall in each case be provided for by the Council.

Provisions Relating To Bonds And Resolutions Of Issue

Section 2705. The terms and provisions of all revenue bonds issued pursuant to this Article shall be as provided in the resolution of issue pursuant to which such bonds are issued, subject only to the provisions of this Article, and each such resolution of issue adopted by the Council may contain such provisions as shall be determined by the Council, subject only to the provisions of this Article.

Recital In Bonds: Reference On Bonds To Resolution Of Issue

Section 2706. All revenue bonds shall contain a recital on their face that neither the payment of principal of nor of interest on such bonds constitutes a debt, liability or obligation of the City of Oakland, except as provided in this Article. Reference on the face of a revenue bond to the resolution of issue by its date of adoption is sufficient to incorporate all of the provisions thereof and of this Article into the body of said revenue bond and its appurtenant coupons. Each taker and subsequent holder of a revenue bond or coupons, whether such coupons are attached to or detached from said revenue bond, shall have recourse to all of the provisions of the resolution of issue and of this Article and shall be bound thereby.

Security

Section 2707. Subject to the provisions of Section 2703 hereof all revenue bonds shall be secured by an exclusive pledge and charge upon all or a portion of (a) the gross revenues of the project for the acquisition, construction and completion of which said bonds are issued or authorized to be issued, (b) revenues from on-street parking meters, and (c) revenues of any existing off-street

parking facilities subject to any pledges, liens or charges then existing, all as provided for in the resolution of issue. Gross revenues of a project include improvements and extensions of such project later constructed or acquired. The gross revenues of the project, any interest earned on the gross revenues of the project, and all pledged on-street parking meter revenues and pledged revenues of existing off-street parking facilities shall constitute a trust fund for the security and payment of the principal of and interest on the bonds and so long as any bonds or interest thereon are unpaid said revenues and interest shall not be used for any other purpose; provided, however, that a resolution of issue may provide that if the principal of and interest on the bonds and all charges to protect and secure them are paid when due, an amount for the maintenance and operation costs of the project and any and all other costs and expenses relative to the project or the bond, may be apportioned from revenues, but only to the extent specified in the resolution of issue. A resolution of issue may also provide for the use and application of any surplus revenues over and above revenues provided for the payment of the principal of and interest on the bonds, maintenance and operation, costs of the project and any and all other charges, provided that such surplus revenues shall be used only in the manner and to the extent specified in the resolution of issue.

Bonds Of Same Issue To Be Equally Secured

Section 2708. Bonds of the same issue shall be equally secured by a pledge and charge upon revenues without priority for number, date of bonds, of sale, of execution, or of delivery; except that if the Council authorizes the issuance of bonds of different series it may provide that the bonds in any series shall, to the extent and in the manner prescribed in the resolution of issue, be subordinated and be junior in standing with respect to the payment of principal and interest and the security thereof to such other bonds as may be specified in the resolution of issue.

Sale of Bonds

Section 2709. Notice inviting sealed bids shall be given in such manner as the Council may prescribe prior to the sale of any revenue bonds. If satisfactory bids are received, the bonds offered for sale shall be awarded to the highest responsible bidder. If no bids are received or if the Council determines that the bids received are not satisfactory as to price or responsibility of the bidders, the Council may reject all bids received, if any, and either readvertise or sell the bonds at private sale. The Council may sell bonds at a price below the par or face value thereof, provided that the maximum net interest cost (computed on a 360-day year basis) on bonds sold below par or face value shall not exceed an average of six percent (6%) per annum, payable semiannually, to the respective maturity dates of said bonds.

Payment Of Incidental Expenses And Interest And Creation Of Funds From Proceeds Of Sale Of Bonds

Section 2710. All costs and expenses incidental to the issuance and sale of bonds, including (without limiting the generality of the foregoing) the cost of preparation of the bonds and coupons, the cost of all surveys, of preparation of plans and specifications, of all architectural, engineering, inspection, legal; financial and economic consultant's, trustee's, and fiscal agent's fees, the creation

of a bond reserve fund, the creation of a working capital fund, and bond interest estimated to accrue during the period of acquisition or construction of a project and for a period of not to exceed six (6) months thereafter, all as provided for in the resolution of issue, may be paid out of the proceeds of sale of the bonds.

Construction Fund; Investment

Section 2711. The proceeds of sale of revenue bonds shall either be deposited in a fund separate and apart from all other funds of the City or paid direct to any bank or trust company designated by the Council as the fiscal agent of the City, and said proceeds shall be held by the City or such fiscal agent in a separate account to be designated the "Construction Fund" and be disbursed in the manner and upon the conditions provided in the resolution of issue for the object and purpose of the acquisition, construction and completion of the project therein designated, including the payment of all incidental expenses and interest and the creation of funds as provided for in Section 2610 of this Article. Moneys in any construction fund may be invested as the Council in its sole discretion shall determine, subject only to such limitations as may be provided in the resolution of issue. Moneys in a construction fund remaining unexpended after said object and purpose shall have been completed shall be applied to the payment of the principal and interest on said bonds, and none of said moneys shall be transferred to any other fund of the City or used for any purpose other than as specified in the resolution of issue.

Continuous Operation Of Project;

Repairs, Renewals and Replacements

Section 2712. So long as any revenue bonds shall be outstanding, the City shall operate or cause to be operated the project, designated in the resolution of issue relating to such bonds, continuously and in an efficient and economical manner and in good working order and condition and shall make all necessary repairs, improvements and replacements.

Rates, Fees And Other Charges

Section 2713. The Council shall prescribe, revise and collect rates, fees and charges (a) for use of the facilities provided by the project acquired, constructed or completed from the proceeds of sale of bonds, (b) for any services rendered in connection with such project, and (c) for use of any on-street parking meters and existing off-street parking facilities any revenues from which are pledged to secure the bonds. Such rates, fees and charges shall at all times be sufficient to yield revenues from the project and net revenues from such on-street parking meters and existing off-street parking facilities equal to all redemption payments and interest charges on said bonds as the same fall due, together with such additional sums as may be required for any sinking fund, reserve fund or other special fund provided for the security or further protection of said bonds, or as a depreciation charge or other charge in connection with such project. Such rates, fees and charges shall not be reduced below an amount sufficient to provide funds to meet all obligations specified in the resolution of issue.

Trustee; Fiscal Agent; Paying Agents

Section 2714. The Council may designate a bank or trust company, qualified to do business in the State of California, as a trustee or fiscal agent for the City and holders of revenue bonds, and may authorize any such trustee to act

on behalf of the holders of the bonds or any stated percentage thereof, and to exercise and prosecute on behalf of the holders of the bonds such rights and remedies as may be available to the holders. The Council may designate any bank or trust company in any city in which any bonds are made payable as the City's paying agent in such city. The Council may fix and determine the conditions upon which any trustee, fiscal agent or paying agent shall receive, hold or disburse any or all revenues deposited with it by or by authority of the City; and may prescribe the duties and powers, if any, of any such trustee, fiscal agent or paying agent with respect to the issuance, authentication, sale and delivery of bonds, the payment of the principal thereof and interest thereon, the redemption thereof, the registration and discharge from registration of bonds, and the management of any funds provided for in the resolution of issue as security for the bonds.

Competitive Projects

Section 2715. A resolution of issue may contain a covenant that the City shall not, while any revenue bonds authorized by this Article are issued or outstanding, acquire, construct, complete or maintain within the City or permit any person to maintain on any city-owned property within the City any off-street vehicular parking facilities or places, excepting those therein described, which compete with any off-street vehicular parking facilities or places maintained or operated by the City through the issuance of revenue bonds pursuant to this Article. A resolution of issue may define the word "compete" as used in the preceding sentence and in such resolution of issue. A resolution of issue may except from the covenant authorized to be made by this section any and all off-street vehicular parking facilities then or thereafter maintained by the City.

Use Of Surplus

Section 2716. After all of the revenue bonds issued pursuant to a resolution of issue shall have been fully paid or discharged, or provision for their payment and discharge irrevocably made, any surplus moneys in any construction fund or other fund provided for the security or further protection of the bonds shall become and be the property of the City and be used by the City for any lawful purpose.

Rights Of Bondholders

Section 2717. Except as provided otherwise in any resolution of issue, the holder of any bond issued pursuant to this Article may be mandamus or other appropriate proceedings require and compel the performance of any of the duties imposed upon the City or any official or employee of the City or assumed by any thereof in connection with the acquisition, construction, completion, operation, maintenance, repair, reconstruction or insurance of any project, or the collection, deposit, investment, application and disbursement of rates, fees and charges derived from the operation and use of any project and all other revenues, or in connection with the deposit, investment or disbursement of the proceeds received from the sale of the bonds under this Article. The enumeration of such rights and remedies does not, however, exclude the exercise or prosecution of any other rights or remedies available to the holders of bonds issued pursuant to this Article.

Article Confers Complete Authority; Provisions of Article Alternative

Section 2718. The provisions of this Article constitute full and complete authority for the issuance of revenue bonds as herein provided by the Council of the City of Oakland and no procedure, or proceedings, consents, approvals, orders or permission from any municipal officer or board of the City of Oakland, shall be required for the acquisition, construction or completion of any project, or the issuance of any revenue bonds under this Article, except as specifically provided in this Article. The powers and authorities conferred by this Article are in addition to and supplemental to all other powers and authorities conferred upon the City of Oakland. The method provided in this Article for the acquisition, construction and completion of projects and the issuance of revenue bonds shall be deemed an additional method for acquiring, constructing and completing such projects and providing funds therefore; provided that the City of Oakland may, in its discretion, acquire any properties for off-street vehicular parking facilities and issue general obligation bonds of the City of Oakland therefor, subject, however, to the condition that the City of Oakland shall not, while any revenue bonds authorized by this Article are issued and outstanding, acquire, construct or complete any off-street vehicular parking facilities, other than those specifically described in a resolution of issue pursuant to the provisions of Section 2715 of this Article, which compete with any project operated or maintained through the issuance of revenue bonds by the Council. Revenue bonds issued under this Article shall not be taken into consideration in determining the bonded indebtedness which the City of Oakland is authorized to incur and shall be excluded from any limitation provided by this Charter or by law on the amount of bonded indebtedness of the City. 6/90

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